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United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 12,963

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

Appellants

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY

Appellees

JOINT APPENDIX

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FILED
DEC 4 - 1968
CARL W. REED, Clerk

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 12,983

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

Appellants

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY

Appellees

JOINT APPENDIX

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Civil Docket 7493

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association,

Defendants.

(See additional sheet for defendants.)

Joseph A. Robie,
741 National Bank Building,
Toledo, Ohio.

James L. Highsaw, Jr.,
620 Tower Bldg.,
Wash. 5, D. C.

Attorneys for Defendant.

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Toledo, Ohio.

Wesley A. Wilkinson,
1324 West 3rd Street,
Cleveland 13, Ohio.

Attorneys for Plaintiff.

Basis of Action: Toledo, Ohio. Action for Permanent injunction. Railway Labor Act.

1956	Plaintiff's Account
1-20	Doyle, Lewis & W., Received $15.00.
1-26	Treas. United States, Disbursed $15.00.
1956	Defendant's Account
6-15	Mulholland, Robie, H., Received $5.00.
6-19	Treas. United States, Disbursed $5.00.

ADDITIONAL DEFENDANTS

William P. Kennedy, President, Brotherhood of Railroad Trainmen.
William E. B. Chase, Vice President, Brotherhood of Railroad Trainmen.
Edward G. Burkley, Acting General Chairman, Brotherhood of Railroad Trainmen.
L. B. Rigney, President, Local Lodge No. 397, Brotherhood of Railroad Trainmen.
R. E. Swert, Local Chairman, Local Lodge No. 397, Brotherhood of Railroad Trainmen.
Leo J. Collins, Local Chairman, Local Lodge No. 907, Brotherhood of Railroad Trainmen.
Brotherhood of Locomotive Firemen and Enginemen, a voluntary association.
H. Edward Gilbert, International President, Brotherhood of Locomotive Firemen & Enginemen.
Milford W. Hampton, Vice President, Brotherhood of Locomotive Firemen and Enginemen.
Robert E. Brown, Jr., General Chairman, Brotherhood of Locomotive Firemen and Enginemen.
L. E. Hoover, President, Local Lodge No. 162, Brotherhood of Locomotive Firemen and Enginemen.
Michael Carone, President, Local Lodge No. 2, Brotherhood of Locomotive Firemen and Enginemen.

The New York Central RR Co.

vs.

Brotherhood of Railroad Trainmen, et-al

Date	Filings—Proceedings
1-20-56	Complaint filed. $15.00.
1-20-56	Summons issued. Thirteen copies of summons and thirteen copies of complaint to U.S. Marshal.
1-20-56	Cost bond in the sum of $2000.00 with Globe Indemnity Co., surety, filed.
1-20-56	Motion for temporary restraining order filed.

1-20-56 Order to show cause and temporary restraining order filed and entered. FLK 13. Noted 1-20-56. Hearing 1-26-56—10 A.M. 13 copies to U.S. Marshal.

1-20-56 Motion of plaintiff for preliminary injunction filed. Mailed.

1-20-56 Clerk's minutes of proceedings filed. Hearing on motion for temporary restraining order.

1-23-56 Motion of plaintiff to substitute party defendant filed.

1-23-56 Order granting motion to substitute party defendant filed & entered. FLK 14 Copies to U. S. Marshal, Rigney and Doyle.

1-23-56 Summons issued. One copy of summons and one copy of complaint and order to show Cause, to U. S. Marshal—New party defendant.

1-25-56 Transcript of record of 1-20-56, filed. $15.00.

1-26-56 Summons returned, served Brown & Hoover, 1-23-56, and filed, $7.40.

1-26-56 Summons returned, served Rigney, Swert, Collins, (Haye deceased), 1-20-56, and filed. $12.80.

1-26-56 Summons returned, served Carone 1-24-56, and filed. $3.40.

1-26-56 Summons returned, served Kennedy, Brotherhood of Trainmen and Burkley, 1-24-56, and filed. $6.20.

1-26-56 Order that the temporary restraining order be extended until 2-2-56, at 2:00 P.M., filed and entered. FLK14 Copies to Warner and Robie. Noted 1-26-56.

1-26-56 Supplemental trial brief on behalf of plaintiff filed.

1-31-56 Answer filed. Mailed 1-31-56.

1-31-56 Trial brief of defendants filed.

1-31-56 Trial brief of plaintiff filed.

2- 3-56 Summons returned, served Gilbert 1-24-56, and Hampton, 1-25-56, and filed. $20.20.

2- 3-56 Clerk's minutes of proceedings filed. Deft granted leave to amend answer by interlineation. Trial to court begun, concluded, submitted on briefs. Plaintiff's brief 10 days—defendants brief 10 days thereafter—Reply brief upon application.

2- 3-56 Plaintiff's exhibits 1 to 30, incl., filed. (Shelf 77 in Vault).

2- 3-56 Defendant's exhibits A to T., incl. filed. (Shelf 77 in vault).

2- 8-56 Summons returned, served Chase, 1-31-56 and filed. $5.40.

2-21-56 Transcript of record of proceedings of 2-3-56 filed.

3- 1-56 Brief of plaintiff filed. Served 3-1-56.

3-12-56 Brief on behalf of defendants filed. Mailed 3-12-56.

3-27-56 Reply brief on behalf of plaintiff filed. Served 3-27-56.

5- 1-56 Memorandum of the Court filed. FLK Permanent injunction to be entered against deft. Plaintiff to lodge Findings of fact and conclusions of law within 10 days: Defendant to file exceptions 10 days thereafter. Copies to Doyle, Robie and Highsaw.

5-11-56 Findings of fact and conclusions of law of pltf. lodged.

5-11-56 Judgment and decree lodged.

5-21-56 Exceptions of defts to proposed findings of fact and conclusions of law submitted by plaintiff filed. Mailed.

5-25-56 Reply to exceptions of defendants to proposed findings of fact and conclusions of law submitted by plaintiff filed. Mailed.

6- 4-56 Findings of Fact and Conclusions of Law filed.

6- 4-56 Copies to Doyle, Lewis & Warner and Joseph A. Robie.

6- 4-56 Judgment and Decree filed and entered. Noted 6-4-56. Plaintiff has right to close North Toledo Yard without interference by Defendants and Defendants enjoined from conducting strike or any act of economic coercion to keep Plaintiff from closing such yard. FLK. 14.

6- 4-56 Copies to Doyle, Lewis & Warner and Joseph A. Robie.

6-14-56 Notice of appeal by defendant filed. Certified copy to Doyle. $5.00.

6-15-56 Bond on appeal in the sum of $2500.00 with The Hartford Accident & Indemnity Company, surety, filed. $5.00.

6-28-56 Motion of defendants for injunction during pendency of appeal filed. Served 6-28-56.

6-28-56 Memorandum in support of defendants motion for an injunction during the pendency of the appeal filed. Served 6-28-56.

7- 9-56 Memorandum of plaintiff in opposition to motion for an injunction during the pendency of appeal filed. Served 7-9-56.

7-18-56 Order extending time for filing record in Court of Appeals to September 12, 1956 filed and entered. FLK. 14.

7-18-56 Copies to Warner and Robie.

8- 6-56 Clerk's minutes of proceedings filed. Hearing on Motion for an injunction pending appeal—Motion granted. Bond fixed in the sum of $100,000.00.

8- 9-56 Motion of plaintiff to dismiss the motion of defendants for an injunction during pendency of an appeal filed. Served 8-9-56.

8-10-56 Order dismissing injunction during pendency of an appeal because of defendants failure to supply required bond as aforesaid filed and entered. FLK. 14. Noted.

8-13-56 Notice waived.
9-10-56 Record forwarded to U. S. Court of Appeals.
9-12-56 Acknowledgement of receipt of record by Court of Appeals on 9-11-56.

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 12,983

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants,*

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY, *Appellees.*

JOINT APPENDIX

[1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

Civil Action No. 7493

Action for Declaratory Judgment and Equitable Relief

THE NEW YORK CENTRAL RAILROAD COMPANY,
Central Union Terminal, Toledo, Ohio, *Plaintiff,*

vs.

BROTHERHOOD OF RAILROAD TRAINMEN,
a Voluntary Association,
Standard Building, 1370 Ontario Street,
Cleveland 13, Ohio; and
WILLIAM P. KENNEDY,
President, Brotherhood of Railroad Trainmen,
Standard Building, 1370 Ontario Street, Cleveland 13, Ohio; and
WILLIAM E. B. CHASE,
Vice President, Brotherhood of Railroad Trainmen,
12051 Cherry Lawn Avenue, Detroit 4, Michigan; and
EDWARD G. BURKLEY,
Acting General Chairman, Brotherhood of Railroad Trainmen
(New York Central—Line West of Buffalo),
Colonial Hotel, Cleveland, Ohio; and
L. B. RIGNEY,
President, Local Lodge No. 397, Brotherhood of Railroad Trainmen,
(New York Central—Line West of Buffalo),
1018 Machow Street, Toledo, Ohio; and

[2]

R. E. SWERT,
Local Chairman, Local Lodge No. 397, Brotherhood of Railroad Trainmen (New York Central—Line West of Buffalo),
350 Field Avenue, Toledo, Ohio; and
LEO J. COLLINS,
Local Chairman, Local Lodge, No. 907, Brotherhood of Railroad Trainmen (New York Central—Line West of Buffalo),
5404 Lewis Avenue, Toledo, Ohio; and
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
a Voluntary Association, 318 B. F. Keith Building,
1621 Euclid Avenue, Cleveland 15, Ohio; and
H. EDWIN GILBERT,
International President, Brotherhood of Locomotive Firemen and Enginemen,
318 B. F. Keith Building, Cleveland 15, Ohio; and
MILFORD W. HAMPTON,
Vice President, Brotherhood of Locomotive Firemen and Enginemen,
R.F.D. 5, Ashtabula, Ohio; and
ROBERT E. BROWN, JR.,
General Chairman, Brotherhood of Locomotive Firemen and Enginemen (New York Central—Line West of Buffalo),
517 Monger Building, Elkhart, Indiana; and

[3]

H. L. HAYE,
President, Local Lodge No. 2, Brotherhood of Locomotive Firemen and Enginemen (New York Central—Line West of Buffalo),
1616 Western Avenue, Toledo, Ohio; and
L. E. HOOVER,
President, Local Lodge No. 162, Brotherhood of Locomotive Firemen and Enginemen (New York Central—Line West of Buffalo),
811 Thomas Street, Elkhart, Indiana,

Defendants.

Now comes the plaintiff, The New York Central Railroad Company, a consolidated railroad corporation, organized and existing under the laws of the State of Ohio and other states, with places of business in Toledo, Ohio, and elsewhere, and for its complaint against the defendants says that:

1. Plaintiff is a common carrier by railroad and is a "carrier" within the meaning of that term, as defined in the Railway Labor Act, U.S.C., Title 45, Sec. 151, et seq., engaged in the transportation of property and persons in interstate commerce and that it operates lines of railroad

[4]

within the jurisdiction of the District Court of the United States for the Northern District of Ohio, Western Division.

2. The defendants, Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Firemen and Enginemen, both are voluntary organizations and are labor or-

ganizations within the meaning of the Railway Labor Act; that the Brotherhood of Railroad Trainmen is, and at all times material hereto has been, the recognized and acting collective bargaining agent for all of plaintiff's employees who are classified as yardmen, switchtenders, baggagemen, flagmen and brakemen; and that the Brotherhood of Firemen and Enginemen is, and at all times material hereto has been, the recognized and acting collective bargaining agent for all of plaintiff's employees who are classified as locomotive firemen, helpers on other than steam locomotives, hostlers and hostler helpers; that each of the defendant Brotherhoods consists of a grand lodge and many subordinate lodges, and each has its principal business office in Cleveland, Ohio.

3. Each of said defendant Brotherhoods is sued here in its common name. Suit is also brought against the class of its members. The members of each of said defendant Brotherhoods are so numerous as to make it impracticable to bring them all before the Court.

4. The defendants other than those hereinabove mentioned in paragraph 2 all are officers and representatives of the defendant Brotherhoods, holding the official positions stated in the caption of this complaint.

5. The court has jurisdiction of this suit because this is an action arising under the laws of the United States regulating interstate commerce, and the Fifth Amendment of the Constitution of the United States. The amount in

[5]

controversy exceeds the sum of $3,000, exclusive of interest and costs. The jurisdiction of this court is more specifically invoked as set forth hereinafter in paragraphs 21 and 26. In the conduct of its business, the plaintiff employs yardmen, switchtenders, brakemen, flagmen, baggagemen, locomotive firemen, helpers on other than steam locomotives, hostlers and hostler helpers, whose duties, generally stated, are the control and handling of the movement of trains

over the rails of the plaintiff. The plaintiff cannot operate its railroads without the performance of these duties. These employees are all members of or represented by the defendant Brotherhoods, The Brotherhood of Railroad Trainmen, and The Brotherhood of Locomotive Firemen and Enginemen, as the collective bargaining agents for the said employees.

6. The plaintiff, the defendants, The Brotherhood of Railroad Trainmen and The Brotherhood of Locomotive Firemen and Enginemen, and plaintiff's employees represented by the defendants are subject to the Railway Labor Act, the general purposes of which are stated in General Purpose (1) of Section 2 of the Railway Labor Act: "to avoid any interruption to commerce or to the operation of any carrier engaged therein" and to provide for the prompt and orderly disposition of any disputes of any nature whatsoever arising between carriers and their employees.

7. The plaintiff, for many years past, has operated several railroad yards in, and in the vicinity of, Toledo, Ohio, one of which is known as its North Toledo Yard, at which yard it receives in interchange freight cars from The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, The New York, Chicago and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, and another yard which is known as its Stanley Yard, in Wood County, Ohio.

[6]

8. On June 7, 1955, the plaintiff notified its employees in writing that on July 10, 1955, it would close its yard operation in its North Toledo Yard and that effective as of the said last mentioned date, the interchange point with the above-mentioned other railroads would be changed from the North Toledo Yard to the Stanley Yard.

9. Thereafter, and prior to July 10, 1955, the planned

date of closing North Toledo Yard, the defendant, the Brotherhood of Railroad Trainmen, through its President, the defendant William P. Kennedy, sent a telegram to the National Mediation Board that:

"Serious situation existing New York Central Railroad Lines West at Toledo, Ohio, as the result of management arbitrarily closing North Toledo Yard without negotiations. Request your Board take immediate jurisdiction over this matter and notify the carrier to hold the matter status quo pending mediation proceedings. Letter follows."

10. On July 8, 1955, the plaintiff received the following telegram from the National Mediation Board:

"We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to allocation of service between the two com-

[7]

mittees at Toledo, Ohio. Organizations further claim that carrier has not complied with provisions of section 6 Railway Labor Act in failing to serve formal notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without passing on propriety of formal docketing of such applications, we have assigned correspondence File C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative. Please acknowledge and advise if this request will be complied with."

11. The plaintiff, in response to the request of the Board, deferred closing of its North Toledo Yard until the matter could be discussed with representatives of the plain-

tiff and of the defendants by a Board representative and so notified the National Mediation Board.

12. Thereupon, the Mediation Board put itself in communication with the plaintiff and the defendants and exercised efforts by mediation to adjust said claimed dispute. Such efforts were unsuccessful and on or about August 2, 1955, the plaintiff and the Brotherhood of Locomotive Engineers and the defendants, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, each received a telegram from E. C. Thompson, Secretary of the Board. The text of this telegram is as follows:

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has considered position of organizations that carrier has not complied

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with provisions of Section 6, Railway Labor Act, by failing to serve formal notice of intention to close North Toledo Yard. Also present status as reported by mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in memorandum agreements of August 3, 1932 and May 1, 1948 covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board."

13. Thereafter, on August 2, 1955, the plaintiff notified its employees in writing that: "Effective at 11 P. M., August 7, 1955, North Toledo Yard will be closed."

14. Thereafter, the plaintiff received the following telegram from the National Mediation Board:

"We are advised by the Brotherhood of Locomotive

Firemen and Enginemen and Brotherhood of Railroad Trainmen that those organizations have set strike date for six AM Eastern Standard Time Sunday August 7, 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Brotherhood of Locomotive Firemen and Enginemen also set strike date for same time on Michigan Central. Board hereby proffers its mediation services under provisions

[9]

of Section Five, First Paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

and in response thereto, the plaintiff, The New York Central Railroad Company, notified said Board that:

"We will co-operate with mediation efforts of Board this case."

and deferred closing of its North Toledo Yard.

15. On Tuesday, November 29, 1955, Wednesday, November 30, 1955, Thursday, December 1, 1955, Friday, December 2, 1955, Monday, December 5, 1955, and Tuesday, December 6, 1955, a member of the National Mediation Board, Francis A. O'Neill, Jr., had a series of separate meetings with representatives of the plaintiff carrier and the bargaining agents of plaintiff's employees, the Brotherhood of Locomotive Engineers, and the defendants, The Brotherhood of Railroad Trainmen and The Brotherhood of Locomotive Firemen and Enginemen, and on or about the 16th day of December, 1955, the plaintiff and each of the said Brotherhoods received the following letter from the National Mediation Board:

"Reference is made to our Case No. A-4923 which covers a dispute between the New York Central Railroad, Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier.

"Mediation services of the Board were proffered in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a. m., EST, Sunday,

[10]

August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

16. On January 17, 1956, the plaintiff notified its employees in writing that effective at 11:00 P. M., E.S.T., January 21, 1956, North Toledo Yard will be closed.

17. Thereafter, the defendants, The Brotherhood of Railroad Trainmen and The Brotherhood of Locomotive Firemen and Enginemen, called a strike, effective at 11 o'clock, P. M., EST, Saturday, January 21, 1956.

18. There is no provision in any agreement by and between the plaintiff and any of the defendant Brotherhoods requiring the plaintiff to use and operate any of its railroad yards or which prohibits it from closing any of its yards or re-designating any interchange point; nor is there any agreement prohibiting this plaintiff from abolishing jobs from any such change of operation.

19. No labor dispute within the meaning and purview of either the Railway Labor Act or the Norris LaGuardia Act, U.S.C. 29, Sections 101-115, inclusive, exists between the plaintiff and the defendant Brotherhoods and any of their members with respect to the right of this plaintiff to close its North Toledo Yard.

20. The threatened strike is called for the sole purpose of requiring the plaintiff to continue the operation of

[11]

said two railroad yards, North Toledo Yard and Stanley Yard, when, in the decision of the management of plaintiff,

the operation conducted in the two yards can be so conducted as to close North Toledo Yard and thereby expediting and more efficiently rendering service to the public.

21. No effective relief by administrative agency, and more particularly by reason of the provisions of the Railway Labor Act, is available to this plaintiff for the proper determination of the claim by the defendants that the plaintiff cannot close its North Toledo Yard. As hereinabove set forth, the National Mediation Board has specifically ruled that it has no jurisdiction over the determination of such matter, which is the actual and immediate controversy between the parties and which is a matter separate and distinct from any labor controversy subject to determination under the Railway Labor Act.

22. The threatened strike is in violation of the plaintiff's constitutional and property rights. Uninterrupted services of the employees represented by the defendant Brotherhoods are essential to the operation of The New York Central Railroad Company. The stoppage of operations would cost plaintiff thousands of dollars of damages daily, would require it to lay off approximately 2,516 employees in the Toledo terminal area, resulting in a total daily wage loss to said employees in excess of $34,800 for each day of said strike or stoppage. The plaintiff would be compelled to embargo shipments into and out of the Toledo terminal area, thus depriving 207 industries in Toledo and vicinity of service by rail by The New York Central Railroad Company and would prevent interchange by the plaintiff with The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, The Chesapeake and

[12]

Ohio Railway Company, The New York, Chicago and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, which serve 228 industries in Toledo and vicinity, that transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day, would be halted.

23. Such strike or work stoppage would paralyze all operations of plaintiff between Toledo and all points on its Western District, being the principal lines of the plaintiff running from Buffalo to Chicago and from Toledo to Charleston, W. Va., necessitating the laying off of approximately 16,361 employees in addition to the employees in the Toledo terminal area, resulting in a total daily wage loss to said employees of approximately $231,575. In addition, it would seriously disrupt passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use plaintiff's Cleveland Union Terminal, and would necessitate the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305. Such strike would seriously disrupt passenger train operations of The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, and the Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo; those of the Grand Trunk Railway System, which uses plaintiff's South Bend, Indiana, passenger station; those of The Pennsylvania Railroad Company, which uses plaintiff's Erie, Pennsylvania, passenger station; and those of The New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago. It also would seriously

affect the passenger and freight operations of other railroads which have and use trackage rights over certain sections of the Western District, as well as the operations of connecting carriers. Such a strike or work stoppage would stop service to approximately 2,180 industries located on the Western District, many of which are engaged in the manufacture of material important to our country's national defense, and many other industries engaged in the manufacture of goods essential to our national economy. Such

strike or work stoppage would stop service to approximately 110 industries which do not have sidetrack connections but which utilize plaintiff's team track facilities at various locations in its Western District.

Such strike or work stoppage would prevent the plaintiff's Eastern District, being the principal lines between Buffalo and New York and Buffalo and Boston, from receiving cars from or delivering cars to plaintiff's lines in its Western and Northern Districts, which would necessitate disruption of train service in the plaintiff's Eastern District and result in laying off of numerous employees who would suffer a substantial wage loss.

• • •

[14]

25. By reason of the facts stated in paragraphs 22 and 23, such strike or work stoppage would cause irreparable damage to plaintiff, said connecting carriers, said industries and said employees. The adverse effects upon business and the public, generally, would cost hundreds of thousands of dollars in damages each day such strike or work stoppage is in effect.

26. By reason of the matters hereinbefore set forth, the plaintiff is entitled to immediate temporary injunctive relief against the defendants; to permanent relief against said defendants under the Federal Declaratory Judgment Act, U.S.C., Title 28, Sections 2201 and 2202, and 49 U.S.C. 1 et seq. (Interstate Commerce Act), and other laws of the United States.

WHEREFORE, plaintiff prays:

(1) That the court issue a preliminary injunction in and by which the defendants and each of them, their agents, servants, counsellors, and all persons acting by, through, or for them, or on their behalf, will be enjoined and restrained from conducting any strike, work stoppage, or any other act of economic coercion to force or keep plaintiff from closing its North Toledo Yard.

[15]

(2) That the court issue a judgment or decree declaring that the defendants and each of them and any and all persons acting by, through, or for them, or on their behalf, have no right, in any way, to interfere with the closing of plaintiff's North Toledo Yard.

(3) That the court issue a permanent injunction in and by which the defendants, and each of them, and any one acting by, through, or for them, or on their behalf, will be enjoined and restrained from conducting any strike, work stoppage, or any other act of economic coercion, to keep plaintiff from closing its North Toledo Yard.

(4) That the court grant plaintiff such other relief as may be meet, including its costs herein.

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904 National Bank Building
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Wesley A. Wilkinson
1324 West 3rd Street
Cleveland 13, Ohio
Telephone: PRospect 1-5000
Attorneys for Plaintiff, The New York Central Railroad Company

Of Counsel:
Milo J. Warner
D. L. Sears

STATE OF OHIO
COUNTY OF CUYAHOGA SS

ROBERT H. McGRAW, being first duly sworn on his oath, says that he is general manager of The New York Central Railroad Company, a corporation, in charge of all property and operations of the corporation in its Western District, including all of its property and operations within the territorial jurisdiction of this court, that he verifies the

foregoing complaint on behalf of said corporation, that he has personal knowledge of the matters alleged in the foregoing complaint and that the facts stated are true.

Robert H. McGraw

Sworn to before me and subscribed in my presence this 20th day of January, 1956.

L. N. Shaner, Notary Public
My Commission expires June 6, 1958.

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[1]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action No. 7493

Answer of Defendants

The New York Central Railroad Company,
Central Union Terminal,

Plaintiff,

v.

Brotherhood of Railroad Trainmen,
Brotherhood of Locomotive Firemen and Enginemen, et al.,

Defendants.

Now come the defendants in the above-captioned case to answer the complaint filed therein on January 20, 1956, as follows:

1. Defendants admit the allegations contained in paragraph 1 of the complaint.

2. Defendants admit the allegations contained in paragraph 2 of the complaint and further state that the two organizations referred to therein are duly certified collective bargaining representatives of the employees involved pursuant to the Railway Labor Act.

3. Defendants are not required to answer the allegations contained in the first two sentences of paragraph 3 of

the complaint as the complaint speaks for itself with respect thereto. Defendants admit the allegations contained in the last sentence of paragraph 3 of the complaint.

4. Defendants admit that the individual defendants listed in the complaint occupy the official positions in the defendant Brotherhoods and in the local lodges of those two

[2]

organizations as set forth in the caption of the complaint as alleged in paragraph 4 thereof with the exception that the name "L. B. Higney" listed as an individual defendant is misspelled and should be "L. B. Rigney", and with the further exception that Mr. H. L. Haye, listed as an individual defendant and as President of Local Lodge No. 2 of the Brotherhood of Locomotive Firemen and Enginemen, died on November 25, 1955. Defendants do not know what the plaintiff means or intends by the use of the term "representatives" in paragraph 4 of the complaint and so are unable to admit or deny the allegation in said paragraph that all of the individual defendants are "representatives" of the defendant Brotherhood.

5. The allegations in paragraph 5 of the complaint as to the jurisdiction of the Court of the suit are legal conclusions of the pleader to which defendants are not required to plead. The defendants admit the factual allegation in sentence number two of said paragraph that the amount in controversy exceeds the sum of $3,000, exclusive of interest and costs. The defendants also admit the factual allegations contained in sentences four, five, and six of said paragraph, except that defendants deny that the duties of flagmen and baggagemen are the control and movement of trains.

6. Defendants admit the allegations contained in paragraph 6 that the plaintiffs, the defendants, and plaintiff's employees represented by the defendant Brotherhoods are subject to the Railway Labor Act (45 U.S.C.A. 151 *et. seq.*). Plaintiff's allegations as to the purposes of said Act, con-

tained in paragraph 6, are legal conclusions of the pleader to which defendants are not required to plead. The Act speaks for itself in Section 2 thereof as to its purposes.

7. Defendants admit the allegations contained in paragraph 7 of the complaint.

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8. Defendants admit that on June 7, 1955, the plaintiff New York Central posted bulletins on various bulletin boards on company property which stated that the North Toledo Yard would be closed on July 10, 1955. Defendants further admit that a letter was sent to the General Chairman of the defendant Brotherhoods, dated June 7, 1955, advising of the proposed action. Except the extent thus admitted, defendants deny the allegations contained in paragraph 8 of the complaint.

9. Defendants admit the allegations contained in paragraph 9 of the complaint but further state that on July 8, 1955, the executive heads of the defendant Brotherhood of Locomotive Firemen and Enginemen and of the Brotherhood of Locomotive Engineers, Mr. H. E. Gilbert and Mr. Guy Brown, also sent the following telegram to the National Mediation Board:

> "Under date June 7, 1955 management New York Central System notified by letter representatives of train and engine service employees that effective 11:00 P. M., July 10, 1955 the North Toledo Yard would be closed. The service at North Toledo Yard as between Michigan Central and New York Central, Lines West engineers and firemen is covered by agreements dated August 3, 1932, supplemented by Memorandum of Understanding effective May 1, 1948. Closing of North Toledo Yard seriously affects the agreements referred to above by disrupting agreed to allocation of service between the two committees at Toledo, Ohio. It is our position that the carrier has not complied with provisions of Section 6 of the Act in failing to serve formal Section 6 Notice of their intention to close North Toledo Yard. Accordingly we are today filing Form NMB-2 application with your Honorable Board to re-

quest that status quo provisions of Section 6 be maintained until the controversy has been finally acted upon as required by Section 5 of the Act.

This was supplemented by a second telegram dated July 8, 1955, amending the above-quoted telegram, reading as follows:

"Reourtel date, invocation services your Board, New York Central System, BLE - BLF&E. Correct second sentence to read Quote The service at North Toledo Yard as between Michigan Central and New York Central, Lines West, engineers and firemen is covered by agreements dated August 3, 1932, supplemented by Memorandum of Understanding effective May 1, 1948. Unquote."

[4]

Defendants further state that on July 7, 1955, the defendant Brotherhood of Railroad Trainmen formally applied to the National Mediation Board for mediation services on the form prescribed by said agency, a copy of which application is attached hereto as Exhibit 1. Defendants further state that on July 8, 1955, a similar application was made by the defendant Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers, a copy of which is attached hereto as Exhibit 2.

10. Defendants are without knowledge that plaintiff actually received the telegram quoted in paragraph 10 of the complaint as alleged therein, but admit that the defendant Brotherhoods each received a similar telegram which showed a copy had been sent to plaintiff New York Central Railroad except that the defendants' copies contained a comma after the word "section" appearing on line three, page 7 of the complaint and did not contain the figure "6" between the words "formal" and "notice" appearing on line four, page 7 of the complaint and except further said copies contained the words "section 6" after the word "formal" appearing on line 4, page 7 of the complaint. A copy thereof is attached as Exhibit 3 hereto.

11. Defendants admit the allegations contained in paragraph 11 of the complaint.

12. Defendants admit the allegations contained in paragraph 12 of the complaint with respect to the mediation efforts of the National Mediation Board and admit that the defendant Brotherhoods received the telegram quoted in said paragraph. Defendants are without knowledge as to whether the Brotherhood of Locomotive Engineers received said telegram as alleged in paragraph 12.

13. Defendants admit that on or about the date alleged plaintiff posted bulletins stating that North Toledo Yard would be closed as alleged in paragraph 13 of the complaint. Defendants further say that on August 4, 1955, the executive heads of the two defendant Brotherhoods, Mr. H. E.

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Gilbert and Mr. W. P. Kennedy, sent the following telegram to the National Mediation Board with respect thereto:

> "This to advise that BLF&E and BRT are setting strike date for 6:00 AM Eastern Standard time Sunday August 7, 1955 New York Central West Account Management arbitrarily closing North Toledo Yard. BLF&E also setting strike date for same time on Michigan Central. Please accept this wire as usual 72 hour notice in cases of this kind."

14. Defendants are without knowledge that plaintiff actually received the telegram quoted in paragraph 14 of the complaint as alleged therein, but state that defendant Brotherhoods received a copy of such a telegram, dated August 4, 1955, showing that a copy had been sent to plaintiff New York Central Railroad. Defendants admit that the plaintiff sent the telegram to the National Mediation Board referred to in paragraph 14 of the complaint and deferred closing the North Toledo Yard as alleged in said paragraph.

15. The defendants admit the allegations contained in paragraph 15 of the complaint with reference to mediation efforts of Mr. Francis A. O'Neill, Jr., except to state

that they do not know the extent of the participation in mediation by the Brotherhood of Locomotive Engineers as referred to in said paragraph or whether that organization received the letter quoted therein. Defendants do not have knowledge that plaintiff received the letter quoted in paragraph 15 of the complaint as alleged therein, but state that the copy received by defendant Brotherhodds shows that it was also sent to plaintiff New York Central Railroad.

16. Defendants admit the notice alleged in paragraph 16 of the complaint was given but state that said notice was given to plaintiff's employees by posting a bulletin on various bulletin boards on company property.

17. Defendants admit that employees represented by defendant Brotherhoods intended to withdraw from service on the New York Central Lines West (Western Division) at the time alleged in paragraph 17 as stated in a tele-

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gram to Mr. L. W. Horning, an officer of plaintiff, which read as follows:

> "Your action to close North Toledo Yard disregarding seniority rights of employees and your failure to recognize agreements now in effect as well as your refusal to handle the contemplated changes as provided by the Railway Labor Act leave us no alternative except to authorize employees represented by our brotherhoods on the New York Central Lines West to withdraw from service effective 11:00 PM Eastern Standard Time Jan. 21, 1956 in order that they may protect their rights."

Except as thus admitted the allegations contained in paragraph 17 of the complaint are denied.

18. The statements contained in paragraph 18 of the complaint are legal conclusions of the pleader to which defendants are not required to plead. The agreements between plaintiff and defendant Brotherhoods speak for themselves. To the extent that defendants may be required to plead to such allegations they are denied.

19. The allegations of paragraph 19 of the complaint

are legal conclusions of the pleader to which defendants are not required to plead. To the extent that defendants may be required to plead thereto they are denied.

20. Defendants deny the allegations contained in paragraph 20 of the complaint.

21. The allegations contained in paragraph 21 of the complaint are legal conclusions of the pleader to which defendants are not required to plead. To the extent that defendants may be required to plead to any of the allegations contained in said paragraph they are denied.

22. Defendants deny the allegations contained in the first sentence of paragraph 22 of the complaint. Defendants admit that the withdrawal from service of the employees represented by the defendant Brotherhoods will close down operation of the New York Central Lines West, (Western Division) but otherwise deny the allegations of the second sentence of paragraph 22. The defendants state that they are without knowledge sufficient to admit or deny

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the allegations contained in the remainder of paragraph 22, but state that there are many other railroads, airlines, and trucking concerns providing transportation into and out of Toledo serving the areas served by New York Central Lines West. Defendants further state that the allegations contained in the last two sentences of paragraph 22 of the complaint are irrelevant on the issue of the grant of the relief requested by plaintiff since, even if true, they do not establish and have no bearing on the legal right of plaintiff to such relief.

23. Defendants admit that the withdrawal from service of employees represented by the defendant Brotherhoods on the New York Central Lines West (Western Division) would stop operations of that division of the plaintiff between Buffalo and Chicago, but deny that it would involve a work stoppage on plaintiff's operation between Toledo and Charleston alleged in paragraph 23 of the com-

plaint and further state that such withdrawal from service will not involve a work stoppage on the following leased or subsidiary railroad lines of plaintiff:

Boston & Albany Ry.
Chicago Junction Ry.
Cleveland, Cincinnati, Chicago and St. Louis Ry.
Indiana Harbor Belt Ry.
Michigan Central Ry.
Peoria and Eastern Ry. Co.
Pittsburgh and Lake Erie Ry. Co.
Toledo and Ohio Central Ry.

or on any of plaintiff's system lines east of Buffalo. Defendants further deny that a work stoppage on the Western Division of plaintiff will threaten national defense or deprive any section of the country of essential transportation service as implied by the allegations of paragraph 23 of the complaint, since if such were threatened, the President of the United States would have appointed an Emergency Board under Section 10 of the Railway Labor Act (45 U.S.C. 160) to hear and report on the dispute. Except to the extent thus stated, defendants do not have sufficient knowledge to admit or deny the allegations of paragraph

[8]

23 of the complaint. Defendants further state that all of the allegations of paragraph 23 are irrelevant on the issue of the relief requested by plaintiff.

24. Paragraph 24 in the copy of the complaint served upon defendants has been stricken by crossed ink lines thereon. Therefore, defendants do not plead to the allegations contained in said paragraph.

25. Paragraph 25 of the complaint does not contain any factual averments but merely sets forth legal conclusions and other opinions of the pleader and defendants are not required to plead thereto. Defendants have already pleaded to the alleged supporting factual averments of the conclusions in paragraph 25 as set forth in paragraphs 22 and 23.

26. Paragraph 26 sets forth legal conclusions of the pleader and defendants are not required to plead thereto. To the extent the defendants may be required to plead thereto defendants deny that plaintiff is entitled to the relief it seeks as stated in said paragraph.

AFFIRMATIVE DEFENSES

27. Defendants state that by reason of the provisions of the Norris-La Guardia Act (29 U.S.C.A. Sections 101-115) the court does not have jurisdiction to grant the injunctive relief against defendants requested in paragraphs (1) and (3) of the prayer for relief in the complaint.

WHEREFORE, Defendants pray:

(1) That plaintiff's prayer for injunctive relief contained in paragraphs (1) and (3) of the prayer for relief in the complaint be dismissed and/or denied.

(2) That plaintiff's prayer for declaratory relief contained in paragraph (2) of the prayer for relief in the complaint be denied.

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(3) That judgment be granted defendants upon the complaint.

(4) That the Court grant defendants such other relief as may be deemed appropriate, including costs herein.

Respectfully submitted,

Joseph A. Robie
741 National Bank Building
Toledo 4, Ohio
James L. Highsaw, Jr.
620 Tower Building
Washington 5, D. C.
Attorneys for the Defendants

Of Counsel:
Mulholland, Robie & Hickey
741 National Bank Building
Toledo 4, Ohio

and
620 Tower Building
Washington 5, D. C.

VERIFICATION

STATE OF OHIO
COUNTY OF LUCAS ss.

WILLIAM E. B. CHASE, being duly sworn, deposes and says:

1. That he is a Vice President, Brotherhood of Railroad Trainmen, and is named as a defendant in the above captioned case.

2. That he has read the foregoing answer of defendants to the complaint of the New York Central Railroad Company against the Brotherhood of Railroad Trainmen and certain individuals holding official positions in the said Brotherhood organization and its local lodges as listed therein, and the other defendants named in the complaint, knows the contents thereof, and that the same is true to his

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own knowledge with respect to all factual statements therein relating to said Brotherhood of Railroad Trainmen and the individual defendants who hold official positions in that organization or its local lodges.

William E. B. Chase

Subscribed and sworn to before me this 31st day of January, 1956.

Doris James
Notary Public
My commission expires June 22, 1957.

STATE OF OHIO
COUNTY OF LUCAS ss.

MILFORD W. HAMPTON, being duly sworn, deposes and says:

1. That he is a Vice-President of the Brotherhood of

Locomotive Firemen and Enginemen and is named as a defendant in the above captioned case.

2. That he has read the foregoing answer of defendants to the complaint of the New York Central Railroad Company against the Brotherhood of Locomotive Firemen and Enginemen and certain individuals holding official positions in the said organization and its local lodges as listed therein, knows the contents thereof, and that the same is true to his own knowledge with respect to all factual statements therein relating to said Brotherhood of Locomotive Firemen and Enginemen and the individual defendants who hold official positions in that organization or its local lodges.

Milford W. Hampton

Subscribed and sworn to before me this 31st day of January, 1956.

.....

Notary Public

My Commission Expires:

.....

[Note: The documents annexed to the Answer and referred to as Exhibits 1, 2, and 3 are reproduced inf as Defendants' Exhibits M, D, and E respectively.]

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[1]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action No. 7493

Certificate of Service

The New York Central Railroad Company, Central Union Terminal,

Plaintiff

v.

Brotherhood of Railroad Trainmen, Brotherhood

of Locomotive Firemen and Enginemen, et al.,

Defendants

This is to certify that the answer of defendants in the above captioned case has been served upon the plaintiff by mailing copies thereof to its counsel as listed below:

Mr. Milo J. Warner
904 National Bank Building
Toledo 4, Ohio
Mr. Wesley A. Wilkinson
1324 West Third Street
Cleveland 13, Ohio

Joseph A. Robie

Dated at:
Toledo, Ohio
January 31, 1956.

[1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 7493 Civil

Opinion of the Court

Filed May 1, 1956

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen,
a Voluntary Association, et al.,

Defendants.

Kloeb, J.:

Plaintiff seeks to enjoin the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen and certain named officers of these Brotherhoods from conducting a strike because of the closing of

the North Toledo Interchange Yard, and, in addition, asks for a declaratory judgment that such defendants have no right to interfere with the closing of the Yard.

For many years plaintiff has operated several yards in and around Toledo, and one of these is the North Toledo Yard, where it receives in interchange freight cars from a number of other railroads. Another of these yards is known as the Stanley Yard adjacent to Toledo and located in Wood County, Ohio.

On June 7, 1955, plaintiff gave notification to its employees that it would close its North Toledo Yard on July 10, 1955, and transfer the interchange point to the Stanley Yard.

On June 11, 1955, and on July 7, 1955, plaintiff's officials and certain officers of the defendants held meetings at which the closing of the North Toledo Yard and its effect on approximately thirty-five men there employed was discussed.

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On July 7, 1955, defendants sent to the National Mediation Board an application for mediation services under the provisions of the Railway Labor Act and stated therein that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. No request was made in the application for a change in any existing working agreements or for a new or supplemental agreement. On the same day, the Mediation Board wired plaintiff that they had received a telegram from defendants, reading as follows:

> "Serious situation existing New York Central Railroad Lines West at Toledo Ohio as the result of the management arbitrarily closing North Toledo Yard without negotiations request your Board take immediate jurisdiction over this matter and notify carrier to hold the matter status quo pending mediation proceedings. Letter follows." (Plaintiff's Exhibit 3).

On July 8, 1955, defendants filed an application for

mediation services by way of a telegram (Defendants' Exhibit D), which read in part as follows:

> "Management, The New York Central Railroad Company, Lines West of Buffalo, advised Local Chairmen, representing the B. of L.E., B. of L.F. & E., and various other Organizations of their desire to close North Toledo Yard, effective 11:00 P.M., July 10, 1955; closing this yard seriously affects agreements dated August 3, 1932, and May 1, 1948, by disrupting proper allocation interdivisional service between Michigan Central R.R. and The N.Y.C.R.R. Co., Lines West, as set forth in telegram this date."

On July 8, 1955, the Medition Board wired plaintiff as follows (Plaintiff's Exhibit 4):

> "We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to allocation of service between the two Committees at Toledo Ohio. Organizations further claim that carrier has not complied with provisions of Section, Railway Labor Act in failing to serve formal Section 6 notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without

[3]

> passing on propriety of formal docketing of such applications, we have assigned correspondence file C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative. Please acknowledge and advise if this request will be complied with. Joint Horning, Brown, Gilbert and Kennedy. By direction of National Mediation Board."

Plaintiff wired the Mediation Board on the same day as follows (Plaintiff's Exhibit 5):

"Receipt acknowledged your telegram requesting we defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by Board representative. We will comply with Board's request and hope Board will act promptly in the matter since we do not want to delay the closing of this Yard indefinitely. Our General Manager, R. H. McGraw, in Cleveland and General Manager E. C. Johnson in Detroit will represent carrier and I suggest conferences in Toledo."

Thereafter, mediation efforts were carried on by the Board with plaintiff and defendants without success and, on August 1, 1955, the Board wired plaintiff as follows (Plaintiff's Exhibit 6):

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has considered position of organizations that carrier has not complied with provisions of Section 6, Railway Labor Act by failing to serve formal notice of intention to close North Toledo Yard, also present status as reported by Mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in Memorandum Agreements of August 3, 1932 and May 1, 1948 covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board. Joint Horning, Brown, Gilbert, Kennedy, MacSwan."

On August 2, 1955, plaintiff notified its employees that the North Toledo Yard would be closed on August 7, 1955.

On August 4, 1955, defendants wired the Mediation Board as follows (Defendants' Exhibit F):

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"This is to advise that BLF&E and BRT are setting strike date for 6:00 AM Eastern Standard Time Sunday August 7 1955 New York Central West account management arbitrarily closing North Toledo Yard. BLF&E also setting strike date for same time on Michigan Central. Please accept this wire as usual 72 hour notice in cases of this kind."

In reply to the above telegram, the Board wired plaintiff and defendants as follows (Plaintiff's Exhibit 8):

"We are advised by the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen that those organizations have set strike date for six am Eastern Standard Time Sunday August 7 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Brotherhood of Locomotive Firemen and Enginemen also set strike date for same time on Michigan Central. Board hereby proffers its mediation services under provisions of Section Five First paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

On the same day, plaintiff wired the Board as follows (Plaintiff's Exhibit 9):

"Receipt acknowledged your wire date Case A-4923. We will cooperate with mediation efforts of Board this Case."

Following extended efforts on the part of the Board with representatives of plaintiff and defendants, the Board sent to plaintiff and defendants the following telegram on December 16, 1955 (Plaintiff's Exhibit 17):

"Reference is made to our Case No. A-4923 which covers a dispute between the New York Central Railroad,

Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier. 'Mediation services of the Board were proferred in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a.m., EST, Sunday, August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

[5]

On January 17, 1956, plaintiff notified its employees in writing that the North Toledo Yards would be closed at 11:00 P.M., January 21, 1956, and, on January 19, 1956, plaintiff received a telegram from the Board, reading as follows (Plaintiff's Exhibit 13):

"Following wire received date from Messrs. Kennedy and Gilbert Quote Employees of New York Central Lines West as represented by Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Firemen and Enginemen authorized to withdraw from service in a legal strike effective 11:00 PM EST Saturday January 21 1956 account of New York Centrals Notice closing North Toledo Yard at that time Unquote".

On January 20, 1956, plaintiff filed its complaint and, on the same day, upon application therefor, the Court issued a temporary restraining order restraining defendants from initiating strike on the following day, and issued an order to show cause returnable on February 3, 1956. On this latter date, the case was presented to the Court on plaintiff's motion for a preliminary injunction and, by agreement of the parties, on its merits.

At the hearing, it was stipulated by the parties that, if called, certain of plaintiff's officials, to wit, Vice President Horning, General Manager McGraw and Superintendent Shea would testify as set forth in affidavits filed by plaintiff on the question of irreparable damages that would be sustained by plaintiff and by the public if the operation of plaintiff railroad would be discontinued because of the called strike. These affidavits recited, in effect, that uninterrupted services of the employees represented by the defendant Brotherhoods are essential to the operation of plaintiff railway company; that the stoppage of operations would cause plaintiff thousands of dollars of damages daily, would require it to lay off approximately 2,516 employees in the Toledo terminal area, resulting in a total wage loss to said employees in excess of $34,800.00 for each day of said strike; that plaintiff would be compelled to embargo shipments into and out of the Toledo terminal area,

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thus depriving 207 industries in Toledo and vicinity of service by rail by plaintiff railway and would prevent interchange by plaintiff with The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, The Chesapeake and Ohio Railway Company, The New York, Chicago and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, which serve 228 industries in Toledo and vicinity, that transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day, would be halted; that such strike would paralyze all operations of plaintiff between Toledo and all points on its Western District, being the principal lines of the plaintiff running from Buffalo to Chicago, and from Toledo to Charleston, West Virginia, necessitating the laying off of approximately 16,361 employees in addition to the employees of the Toledo terminal area, resulting in a total daily wage loss to said employees of approximately $231,575.00; that, in addition, it

would seriously disrupt passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use plaintiff's Cleveland Union Terminal, and would necessitate the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00; that such strike would seriously disrupt passenger train operations of The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, and the Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo and those of the Grand Trunk Railway System, which uses plaintiff's South Bend, Indiana, passenger station, those of The Pennsylvania Railroad Company, which uses plaintiff's Erie, Pennsylvania, passenger station and those of The New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago; that it would seriously affect the passenger and freight opera-

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tions of other railroads which have and use trackage rights over certain sections of the Western District, as well as the operations of connecting carriers; that it would stop service to approximately 2,180 industries located on the Western District, many of which are engaged in the manufacture of goods essential to our economy; that it would stop service to approximately 110 industries which do not have side-track connections but which utilize plaintiff's team track facilities at various locations in its Western District; that it would prevent plaintiff's Eastern District, being the principal lines between Buffalo and New York and Buffalo and Boston, from receiving cars from or delivering cars to plaintiff's lines in its Western and Northern Districts, which would necessitate disruption of train service in the plaintiff's Eastern District and result in laying off of numerous employees who would suffer a substantial wage loss.

The above testimony on the question of irreparable damage is uncontroverted in the record.

At the opening of the hearing, the Court granted the request of defendants to amend the answer by adding a new paragraph 28 stating that the complaint failed to state a claim upon which relief can be granted. Counsel for defendants then moved the Court to dismiss the complaint upon the basis of paragraph 28 of the answer. For the purpose of the motion, the Court accepted the allegations of the complaint to be true, and these included paragraph 20 of the complaint, which reads as follows:

> "The threatened strike is called for the sole purpose of requiring the plaintiff to continue the operation of said two railroad yards, North Toledo Yard and Stanley Yard, when in the decision of the management of plaintiff, the operation conducted in the two yards can be so conducted as to close North Toledo Yard and thereby expediting and more efficiently rendering service to the public."

There can be no question but that counsel for defense, as well as for plaintiff, argued the motion on the basis

[8]

that the threatened strike was called for the sole purpose of requiring the plaintiff to continue the operation of the North Toledo Yard.

On page 6 of the record, counsel for defendants, referring to the complaint, made the following statement:

> "For the purposes of this one motion as it stands, it is based upon the acceptance of the factual allegations contained therein."

On page 8, counsel for defendants made the following statement:

> "It is our position that in the railroad industry the right to strike is not prohibited by any statute. *** Therefore, it is our position that the railroad Brotherhoods had a legal right to strike on January 21st without regard to statutory provisions, even for the sole purpose of preventing the closing of the North Toledo Yard.

"Our second position is that that dispute over the closing of the North Toledo Yards, assuming there is nothing else involved in it, raises a labor dispute within the meaning of the Norris-LaGuardia Act so that the provisions of that Act attach."

"THE COURT: You are maneuvering, then, into a situation where you rely upon the common law right to strike, is that correct?

"MR. HIGHSAW: That is correct.

"THE COURT: And you feel that at the same time the Norris-LaGuardia Act would forbid any Court from intervening and enjoining that right?

"MR. HIGHSAW: That is correct.

* * * * *

"THE COURT: You are discounting the existence of any agreement then.

"MR. HIGHSAW: We are discounting for this purpose, Your Honor, the existence of any agreement.

"MR. WARNER: May it please the Court, I think that at least in part Mr. Highsaw has helped, — — I mean the first part of his statement, — — has helped to narrow this down to the real issue, and that is whether or not the Brotherhoods have a right to strike solely because of the closing of the North Toledo Yard. * * *

"* * * The railroad asks the Court only that the employees and their representatives be enjoined from striking because of the closing of the yard." (R., p. 10).

[9]

On page 17 of the record, we find the following statement by counsel for defense:

"We want to bargain with you about that issue and we want to reach an agreement with you about that issue as to whether you close the yard or not, or if you close the yard maybe give us some other concessions in some other direction."

On page 23 of the record, we find the following statement by counsel for the defendants:

"We are now talking about collective bargaining over the continuance of the operation of the North To-

ledo Yard and a strike on behalf of the Brotherhoods to require the railroad to bargain with them about that. That is what it really amounts to, because up to now, Your Honor, the railroad has not sat down face to face across a table with these employees, and so much as said one word about this question of maintaining the North Toledo Yard."

On page 29 of the record, we find counsel for the defendants making the following statement:

"MR. HIGHSAW: It is our position, Your Honor, that as to the authority of the railroad management to effect a physical change, namely, the closing of this yard, that that is a subject which the Brotherhoods have a legal right to negotiate with the management about, aside from these other questions."

On pages 31 and 32, we find the following:

"THE COURT: (Interposing) Then it is the decision of the Brotherhoods that they want to participate in management problems, is that it?

"MR. HIGHSAW: I say it is the position of the Brotherhoods, given this kind of a problem which they have here, that they can sit down and discuss and negotiate it."

On page 33, we find the following colloquy:

"THE COURT: If your theory would prevail here, then anytime any railroad would want to make a change in its physical set-up and operation its directors would be required to sit down with the Brotherhoods, and come to an agreement on the propriety of that change; is that the position you are taking?

"MR. HIGHSAW: Yes, Your Honor."

It appears uncontroverted in the record that the plaintiff was ready and willing at all times to discuss, negotiate, mediate or arbitrate with the defendants the problems

[10]

growing out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard and is still willing to do so at any time that defendants choose to con-

sider the question; it appears further from the record that plaintiff has at all times fully cooperated with and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act. It appears further from the record that the defendants have filed no specific grievances or complaints with the National Railroad Adjustment Board as suggested by the Mediation Board in its telegram of August 1, 1955 (Plaintiff's Exhibit 6), if it was concluded that arbitrary changes covering allocation of services would follow the closing of the Yard.

Assuming that the closing of the Yard does not raise a labor dispute, there appears to be no effective or proper available relief by any administrative agency open to plaintiff on the question of the closing of the Yard.

It is the position of defendants on their motion to dismiss the complaint that, first, they have a common law right to strike regardless of any statutes, and particularly the Railway Labor Act, over the proposed closing of the Yard, and, second, that the Norris-LaGuardia Act forbids the Court to enjoin defendants from bringing about a strike or work stoppage.

Section 108 of Title 29 United States Code Annotated, (Norris-LaGuardia Act), reads as follows:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Section 113 (c) reads as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of per-

> sons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in

the proximate relation of employer and employee."

It is the position of plaintiff that the closing of the North Toledo Yard involves solely a question of management decision with which defendants cannot concern themselves, and that if a collateral effect of such closing necessitates a reallocation of the work of certain employees that this presents a separate and distinct question that may later be subject to negotiation, mediation or arbitration.

We are of the opinion that the proposed closing of the Yard is a decision for management alone to make if, in the interest of efficiency of operation, service to the public or meeting competition, management should deem such a step advisable. We can envision any number of situations wherein management would decree a physical change in its method of operations either in its offices, its terminals, on its roadbeds, in its round houses, or in the operation of its trains, wherein the work of certain of its employees would be affected, and see no reason why management should be precluded from making these decisions in the interest of their company as well as of the public. Such decisions have been and are being made by public carriers as a matter of right and without consultation with their employees. To decree otherwise would bring about a violent disruption to our free enterprise system.

We are of the opinion that to initiate a strike that would cause irreparable damage to plaintiff, as well as to the public, on the grounds of a right to sit down and discuss and negotiate with management a proposed change in its physical set-up or its method of operation is placing the right to strike on an invalid ground, a ground that is untenable.

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We do not agree with defendants that under the facts before us they have a common law right to strike regardless of statutes, for no permissible purpose appears.

In the case of Dorchy v. Kansas, 272 U.S. 306, at page

311, opinion by Mr. Justice Brandeis, we find the following:

"The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. Compare Guaranty Trust Co. v. Green Cove R. R., 139 U. S. 137, 143; Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. Compare People v. Barondess, 16 N. Y. Supp. 436; 133 N. Y. 649. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare Aikens v. Wisconsin, 195 U. S. 194, 204-5."

We do not agree with defendants that plaintiff is precluded by the terms of the Norris-LaGuardia Act from appealing to the equity powers of the Court and seeking an injunction or that the Court, under the terms of the Act, is powerless to enjoin. We come to this conclusion because we believe that there is no labor dispute as defined by Section 113 (c) involved herein. Counsel for defendants have cited a number of cases wherein the Courts have felt bound by the terms and conditions of the Norris-LaGuardia Act after concluding that a "labor dispute" was involved.

Typical of these cases is Diamond Full Fashioned Hosiery Co. v. Leader, et al., 20 F.S. 467 (D.C. E.D. Pa., decided September 10, 1937).

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This is an opinion by District Judge Maris, now of the Court of Appeals, in which he decides that a hosiery com-

pany suit to enjoin a hosiery workers' union from picketing a closed mill of another hosiery company claimed to have locked them out of employment, from interfering with a shipment to plaintiff of machines purchased from the second hosiery company is one involving or growing out of a labor dispute, and comes within the purview of the Norris-LaGuardia Act and he, therefore, declined to issue an injunction.

In this case there was no public carrier involved, no administrative procedure available for the settlement of the dispute such as the Railway Labor Act in the instant case, and there was no vital public interest at stake in determining the issue.

Courts are more concerned where the public interest is at stake in an effort to safeguard that interest.

In the case of Virginian Railway Co. v. System Federation No. 40, et al., 300 U.S. 515, at page 552, an opinion by Mr. Justice Stone, we find the following:

> "More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. Pennsylvania v. Williams, 294 U.S. 176, 185; Central Kentucky Gas Co. v. Railroad Commission, 290 U.S. 264, 270-273; Harrisonville v. W. S. Dickey Clay Co., 289 U.S. 334, 338; Beasley v. Texas & Pacific Ry. Co., 191 U.S. 492, 497; Joy v. St. Louis, supra, 47; Texas & Pacific Ry. Co. v. Marshall, 136 U.S. 393, 405-406; Conger v. New York, W. S. & B. R. Co., 120 N.Y. 29, 32, 33; 23 N.E. 983. The fact that

Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in induc-

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ing courts to give relief. It is for similar reasons that courts, which traditionally have refused to compel performance of a contract to submit to arbitration, Tobey v. Bristol, supra, enforce statutes commanding performance of arbitration agreements. Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 119, 121; Marine Transit Corp. v. Dreyfus, 284 U.S. 263, 278."

We conclude, therefore, that the position of plaintiff that there is no labor dispute involved in consideration of the motion to dismiss the complaint is sound, and that the motion ought to be, and is, overruled.

If the motion to dismiss the complaint is overruled, as has been done, defendants press the point that a certain agreement for the allocation of work at the North Toledo Yard entered into by plaintiff and the Michigan Central Railroad Company in the year 1932, and amended in 1948, is being violated, and the conditions thereof changed to the detriment of thirty-five employees involved at the North Toledo Yard, and that this is a direct and natural result of the closing of the Yard and, therefore, taken with the act of management in decreeing the closing of the Yard creates a labor dispute that brings the case within the terms of the Norris-LaGuardia Act and, therefore, precludes the Court from exercising injunctive powers.

The present dispute over yard service had its origin in the absorption by the plaintiff railway company of the operations of the Michigan Central Railroad Company and of the Toledo and Ohio Central Railroad. In 1930, the Michigan Central was leased to the New York Central. It is still operated by plaintiff as a leased line railroad. The Toledo and Ohio Central Railroad Company also became a leased line railroad of plaintiff in 1930 and, on February 13, 1952, it was merged into the plaintiff company.

Prior to 1930, the Michigan Central operated into To-

ledo from the north and its yard operations in the area

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were performed in the North Toledo Yard. Work in that yard was performed by yard service crews employed by Michigan Central, whose job rights were set forth in agreements between that carrier and its employees. The leasing of the Michigan Central Railroad to plaintiff necessitated new agreements between them and their respective employees covering yard service within the Toledo Terminal area. Such an agreement was negotiated and signed by the parties effective August 5, 1932 (Defendants' Exhibit J). This agreement was amended to some extent on May 1, 1948 (Defendants' Exhibit K).

After the lease of the Toledo and Ohio Central Railroad Company's lines into Toledo, a working agreement was entered into by plaintiff, whereby a division of work between plaintiff and T. & O. C. employees in connection with the Stanley Yard was effected. That agreement is still in effect.

With the closing of the North Toledo Yard, and the transfer of its activities to the Stanley Yard, a reallocation of the work of the employees at the North Toledo Yard is necessitated and this, of course, results in a clash of interests with employees serving the Stanley Yard.

Defendants feel that this situation raises a labor dispute which is directly attributable to the decision of management to close the North Toledo Yard and, therefore, creates a joint problem in which they have a right to participate and negotiate as a labor dispute in advance of the closing of the Yard.

The New York Central-Michigan Central agreement of August 5, 1932 (Defendants' Exhibit J) contains no requirement that plaintiff maintain the North Toledo Yards either in perpetuity or for any length of time. The agreement does not purport to give the employees a vested right in their jobs nor the right to them or their successors on

the jobs of doing the work assigned at the time the agreement was entered into in the accepted fashion or in perpetuity. The Mediation Board found that there was no agreement binding plaintiff to maintain the North Toledo Yard and, therefore, in effect, concluded that there was no labor dispute involved that would authorize it to assume jurisdiction. It further concluded that arbitrary changes, if any, in the agreement (J & K) would be referable to the National Railroad Adjustment Board. With these conclusions we agree. Defendants at no time asked for any change in the agreements nor for a new agreement, nor did they seek to appeal the decision of the Mediation Board to the National Adjustment Board as suggested by the Mediation Board.

If we concede that defendants are correct in their position that the attachment of the question of the effect of the closing of the North Toledo Yard to the decision of management to close the Yard makes a labor dispute, then we lay open for all time to come a method of circumvention of the designs of the Railway Labor Act whenever a decision of management requires a reallocation of the work of employees. We think that the adoption of such a course would be wrong. The closing of the North Toledo Yard may have the effect of requiring a reallocation of the work of thirty-five employees. If and when it does, that issue can and must be met, and it must be met in compliance with the requirements of the Railway Labor Act. The closing of the Yard as decreed by management is the initial step — that comes first. If and when the interests of the employees require attention as a result of the closing, then under the terms of the Railway Labor Act plaintiff and defendants are required to negotiate and, if necessary, carry the problem to the National Adjustment Board. We are not here concerned with the rights of the parties following a decision of the National Adjustment Board should the problem reach and require its attention.

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We believe that a labor dispute cannot be found over the closing of the North Toledo Yard by seeking to incorporate in that action the anticipatory results upon the employees. The latter is a separate and distinct problem that may be met when the time arrives.

It is, therefore, the judgment of the Court that defendants have no right in any way to interfere with the closing of plaintiff's North Toledo Yard, and that a permanent injunction issue enjoining the defendants from conducting any strike, work stoppage or any other act of coercion to keep plaintiff from closing its North Toledo Yard.

In arriving at our conclusions we have been aided by the cases of Elgin, Joliet & Eastern Railway Co. v. Burley, et al., 325 U.S. 711 and The Chicago River and Indiana Railroad Company, et al v. Brotherhood of Railroad Trainmen, et al., 229 Fed. (2d) 926.

Plaintiff may, within ten days, lodge with the Court findings of fact and conclusions of law drawn in accordance with this opinion, and defendants may, within ten days thereafter, file their exceptions or suggested additions thereto.

(signed) Frank L. Kloeb,
United States District Judge.

Toledo, Ohio.

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[1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 7493 Civil

Findings of Fact and Conclusions of Law

Filed: June 4, 1956

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen,
a Voluntary Association, et al.,

Defendants.

1. The Plaintiff, the New York Central Railroad Company, is a consolidated railroad corporation organized and existing under the laws of the State of Ohio and other states, with places of business in Toledo, Ohio and elsewhere.

2. Prior to January 2, 1930, the Michigan Central Railroad Company operated into Toledo from the North. On January 2, 1930 the railroad and property of the Michigan Central Railroad Company were leased to the plaintiff, and as of the date of the said lease, the New York Central Railroad Company took over the operations formerly conducted by the Michigan Central including the operations from the North to Toledo, and ever since that date, the New York Central has conducted the railroad operations formerly conducted by the Michigan Central. At all times material herein prior to February 13, 1952, the New York Central operated the railroad and property of the Toledo and Ohio Central Railway Company under lease. On February 13, 1952, the Toledo and Ohio was merged into plaintiff, the New York Central Railroad Company. Following the leasing of the Michigan Central to the plaintiff, a new agreement among the defendants Brotherhood of Railroad

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Trainmen, Brotherhood of Locomotive Firemen and Engineers, and the plaintiff, together with other Brotherhoods not parties hereto, effective August 5, 1932, was entered into, reallocating the work between former Michigan Central employees and New York Central employees. This agreement was amended by an agreement dated May 1, 1948.

3. Plaintiff is a common carrier by railroad within the meaning of that term as defined in the Railway Labor Act, U.S.C., Title 45, Sec. 151 et seq., and is engaged in the transportation of property and persons in interstate commerce within the jurisdiction of the District Court of the United States for the Northern District of Ohio, Western Division.

4. The defendants, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, are voluntary organizations and labor organizations within the meaning of the Railway Labor Act. Each of said defendant Brotherhoods consists of a Grand Lodge and many subordinate lodges, and each has its principal office in Cleveland, Ohio.

5. Said Brotherhoods are, and at all times material hereto have been, the recognized and acting collective bargaining representatives for all of plaintiff's employees who are classified as yard-men, switchtenders, baggagemen, brakemen, flagmen, locomotive firemen, helpers on other than steam locomotives, hostlers and hostler helpers.

6. The defendants other than said Brotherhoods are all officers of said Brotherhoods, or of local lodges thereof, holding the official positions stated in the caption of the complaint herein as amended.

7. The amount in controversy exceeds the sum of $3,000.00 exclusive of interest and costs.

[3]

8. The plaintiff in the conduct of its business, employs the classes of employees mentioned in Paragraph 5 above and the plaintiff can not operate its railroad without the performance of the duties performed by said employees, all of whom are members of, or represented by one or the other of the defendant Brotherhoods as their collective bargaining representative.

9. The plaintiff for many years past has operated railroad yards in and in the vicinity of Toledo, Ohio. Its

North Toledo Yard, prior to 11 o'clock P.M. on January 21, 1956, was operated and used for the receipt and interchange of freight cars from the Pennsylvania Railroad Company, the New York, Chicago and St. Louis Railway Company, and the Toledo Terminal Railroad Company. Plaintiff also for many years past has operated another yard, known as its Stanley Yard in Wood County, Ohio.

10. The members of said Brotherhoods are so numerous as to make it impracticable to bring them all before the court and this suit is brought against the class of said members.

11. On June 7, 1955, the plaintiff notified its employees in writing that on July 10, 1955, it would close its yard operation in its North Toledo Yard, and that effective as of July 10, 1955, the interchange point with the above mentioned other railroads would be changed from the North Toledo Yard to the Stanley Yard.

12. On June 11, 1955, and on July 7, 1955, plaintiff's officials and certain officers of the defendants held meetings at which the closing of the North Toledo Yard and its effect on approximately thirty-five men there employed was discussed.

13. On July 7, 1955, defendants sent to the National Mediation Board an application for mediation services under the provisions of the Railway Labor Act and stated

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therein that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. No request was made in the application for a change in any existing working agreements or for a new or supplemental agreement. On the same day, the Mediation Board wired plaintiff that they had received a telegram from defendants, reading as follows:

> "Serious situation existing New York Central Railroad Lines West at Toledo, Ohio as the result of the management arbitrarily closing North Toledo Yard without negotiations request your Board take

immediate jurisdiction over this matter and notify Carrier to hold the matter status quo pending mediation proceedings. Letter follows."

14. On July 8, 1955, defendants filed an application for mediation services by way of a letter, which read in part as follows:

"Management, The New York Central Railroad Company, Lines West of Buffalo, advised Local Chairmen, representing the B. of L.E., B. of L.F. & E., and various other Organizations of their desire to close North Toledo Yard, effective 11:00 P.M., July 10, 1955; closing this yard seriously affects agreements dated August 3, 1932, and May 1, 1948, by disrupting proper allocation interdivisional service between Michigan Central R.R. and The N.Y.C. R.R. Co., Lines West, as set forth in telegram this date."

15. On July 8, 1955, the Mediation Board wired plaintiff as follows:

"We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to allocation of service between the two Committees at Toledo, Ohio. Organizations further claim that carrier has not complied with provisions of Section, Railway Labor Act in failing to serve formal Section 6 notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without passing on propriety of formal

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docketing of such applications, we have assigned correspondence file C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative. Please acknowledge and advise

if this request will be complied with. Joint Horning, Brown, Gilbert and Kennedy. By direction of National Mediation Board."

Plaintiff wired the Mediation Board on the same day as follows:

"Receipt acknowledged your telegram requesting we defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by Board representative. We will comply with Board's request and hope Board will act promptly in the matter since we do not want to delay the closing of this Yard indefinitely. Our General Manager, R. H. McGraw, in Cleveland and General Manager E. C. Johnson in Detroit will represent carrier and I suggest conferences in Toledo."

16. Thereafter, mediation efforts were carried on by the Board with plaintiff and defendants without success and, on August 1, 1955, the Board wired plaintiff as follows:

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has considered position of organizations that carrier has not complied with provisions of Section 6, Railway Labor Act by failing to serve formal notice of intention to close North Toledo Yard, also present status as reported by Mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in Memorandum Agreements of August 3, 1932 and May 1, 1948 covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board. Joint Horning, Brown, Gilbert, Kennedy, MacSwan."

17. On August 2, 1955, plaintiff notified its employ-

ces that the North Toledo Yard would be closed on August 7, 1955.

18. On August 4, 1955, defendants wired the Mediation Board as follows:

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"This is to advise that BLF&E and BRT are setting strike date for 6:00 AM Eastern Standard Time Sunday August 7, 1955 New York Central West account management arbitrarily closing North Toledo Yard. BLF&E also setting strike date for same time on Michigan Central. Please accept this wire as usual 72 hour notice in cases of this kind."

In reply to the above telegram, the Board wired plaintiff and defendants as follows:

"We are advised by the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen that those organizations have set strike date for six am Eastern Standard Time Sunday August 7, 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Brotherhood of Locomotive Firemen and Enginemen also set strike date for same time on Michigan Central. Board hereby proffers its mediation services under provisions of Section Five First paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

On the same day, plaintiff wired the Board as follows:

"Receipt acknowledged your wire date Case A-4923. We will cooperate with mediation efforts of Board this Case."

19. Following extended efforts on the part of the Board with representatives of plaintiff and defendants, the Board sent to plaintiff and defendants the following letter on December 16, 1955:

"Reference is made to our Case No. A-4923 which covers a dispute between the New York Central Railroad, Lines West and the Brotherhood of Locomotive

Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier. 'Mediation services of the Board were proferred in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a.m., EST, Sunday, August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

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20. On January 17, 1956, plaintiff notified its employees in writing that the North Toledo Yards would be closed at 11:00 P.M., January 21, 1956, and on January 19, 1956, plaintiff received a telegram from the Board, reading as follows:

"Following wire received date from Messrs. Kennedy and Gilbert Quote Employees of New York Central Lines West as represented by Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Firemen and Enginemen authorized to withdraw from service in a legal strike effective 11:00 PM EST Saturday January 21, 1956 account of New York Centrals Notice closing North Toledo Yard at that time Unquote".

21. The agreements between plaintiff and said defendant Brotherhoods representing employees of plaintiff, contain no requirement that plaintiff maintain the North Toledo Yards either in perpetuity or for any length of time.

22. Said strike ordered and called by the defendant Brotherhoods was so threatened and called to require the plaintiff to continue the operation of its North Toledo Yard.

23. Such dispute between plaintiff and defendants

does not involve terms or conditions of employment.

24. Plaintiff was ready and willing at all times hereinbefore specified and is still w ing to discuss, negotiate, mediate or arbitrate with defendants the problems which may grow out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard operation. Plaintiff has at all times fully cooperated with, and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act. Defendants have filed no specific grievances or complaints with the National Railway Adjustment Board, as suggested by said Mediation Board in its telegram of August 1, 1955.

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25. The strike threatened and ordered by said defendant Brotherhoods as hereinbefore recited, would if it transpired, cause the following listed effects and consequences to-wit:

The laying off of approximately 2,516 employees in the Toledo terminal area, resulting in wage loss to employees in excess of $34,800.00 for each day of such strike.

Embargo of shipments into and out of the Toledo terminal area, depriving 207 industries in Toledo and vicinity of service by rail, by plaintiff railroad company.

The prevention of interchange by plaintiff with The Baltimore and Ohio Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railroad Company, the New York, Chicago, and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, serving 228 industries in Toledo and vicinity.

The prevention of transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day.

The paralysis of all operations of plaintiff between Toledo and all points on its Western District, being the principal lines of the plaintiff from Buffalo to Chicago, and from Toledo to Charleston, W. Virginia, necessitating the laying off of approximately 16,361 employees in addition

to those mentioned in the Toledo Terminal area, resulting in a total daily wage loss to said employees during each day of such strike in the approximate amount of $231,575.00.

The disruption of passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use Cleveland's Union Ter-

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minal, and the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00.

The disruption of passenger train operation of The Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railroad Company, and The Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo. Also disruption of the passenger train operations of the Grand Trunk Railway System which uses plaintiff's South Bend, Indiana, passenger station, and also those of the Pennsylvania Railroad Company which uses plaintiff's Erie, Pennsylvania passenger station, and also those of the New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago, Illinois.

The impediment of passenger and freight operations of other railroads which have and use trackage rights over certain sections of said Western District, and also the operations of connecting carriers.

The stoppage of service to approximately 2,180 industries located on said Western District of plaintiff's railroad, many of which are engaged in the manufacture of goods essential to our economy.

The stoppage of service to approximately 110 industries which do not have side track connections, but which utilize plaintiff's team track facilities at various locations in said Western District.

The prevention of the interchange of cars by plaintiff between its Eastern District and its Western and Northern Districts, and disruption of train service in plaintiff's Eastern District, and the laying off of numerous employees, and a substantial resulting loss of wages.

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CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter and the parties to this action.

2. Plaintiff, the defendants, the Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Firemen and Enginemen, their officers and plaintiff's employees represented by said Brotherhoods, are subject to the Railway Labor Act.

3. No labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act exists between plaintiff and defendants with respect to the right of plaintiff to close its North Toledo Yard.

4. Plaintiff has a right to close its North Toledo Yard and the defendants have no right in any way to interfere with such closing.

5. The strike threatened and ordered by defendants to prevent such closing of North Toledo Yard, would cause irreparable damage to the plaintiff and to the public.

6. No effective relief by law or by an administrative agency of the United States Government is available to plaintiff to prevent such strike and such damage.

7. A permanent injunction against the defendants, and each of them, and any one acting by, through or for them, or on their behalf, restraining them, and each of them from threatening, calling or conducting any strike, work stoppage or any other act of economic coercion to prevent plaintiff from closing its North Toledo Yard, should be ordered and issued by this Court.

Frank L. Kloeb,
Judge

Approved:
Doyle, Lewis & Warner
Milo J. Warner
D. L. Sears
Wesley A. Wilkinson
Attorneys for Plaintiff

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Attorneys for Defendants

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CERTIFICATE

It is certified that copies of the proposed Findings of Fact and Conclusions of Law have been furnished to opposing counsel.

D. L. Sears
Of Counsel for Plaintiff

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[1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 7493 Civil

Judgment and Decree

Filed: Jan. 4, 1956

The New York Central Railroad Company,

Plaintiff.

vs.

Brotherhood of Railroad Trainmen,
a Voluntary Association, et al.,

Defendants.

This cause came on to be heard on February 3, 1956, on plaintiff's motion for a preliminary injunction and by agreement of the parties, on its merits, was argued by counsel and considered by the Court upon the evidence, the

stipulations, the arguments and the briefs of counsel, and upon consideration thereof, and the Court having made and entered herein Findings of Fact and Conclusions of Law, and in conformity therewith and upon consideration of all of the issues herein, it is declared, ordered, adjudged and decreed that the plaintiff has a right to close its North Toledo Yard and that none of the defendants, nor any persons acting by, through or for them, or on their behalf, have any right in any way to interfere with the closing of said North Toledo Yard.

It is further ordered, adjudged and decreed that the defendants, and each of them and anyone acting by, through or for them, or on their behalf, be and they hereby are permanently enjoined and restrained from conducting any strike, work stoppage or any other act of economic coercion to keep or prevent plaintiff from closing its North Toledo Yard.

It is further ordered, adjudged and decreed that plaintiff have and recover from defendants, its costs herein expended.

Frank L. Kloeb,
Judge

Approved:

Doyle, Lewis & Warner
Milo J. Warner
D. L. Sears
W. A. Wilkinson
Attorneys for Plaintiff

Approved:

.....

.....

Attorneys for Defendants

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It is certified that copies of the proposed Judgment and

Decree filed herewith, have been furnished to opposing counsel.

D. L. Sears, Of Counsel
for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action 7493

Notice of Appeal

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al.,

Defendants.

[1]

Notice is hereby given that the Brotherhood of Railroad Trainmen, William P. Kennedy, William E. B. Chase, Edward G. Burkley, L. B. Rigney, R. E. Swert, and Leo J. Collins and the Brotherhood of Locomotive Firemen and Enginemen; H. Edward Gilbert, Milford W. Hampton, Robert E. Brown, Jr., L. E. Hoover, and Michael Carone, defendants above named, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the final judgment declaring, ordering, adjudging and decreeing that the Plaintiff has a right to close its North Toledo Yard and that none of the Defendants, or any persons acting by, through, or for them, or on their behalf, have any right in any way to interfere with the closing of said North Toledo Yard and the order of the court permanently enjoining and restraining the said parties from conducting any strike, work stoppage or any other act of coercion to keep plaintiff from closing its North Toledo Interchange Yard, entered in this action on June 4, 1956.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action 7493

Journal Entry

Filed: July 18, 1956

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al.,

Defendants.

This day this cause came on to be heard upon oral motion of the parties for an extension of time for filing the record on appeal and docketing the appeal with the United States Court of Appeals for the Sixth Circuit, and it appearing to the Court that the respective parties, through their counsel, have agreed between and among

themselves, and have represented to the court, that such extension of time is both warranted and necessary, it is hereby ordered, adjudged, and decreed that the time for filing the record on appeal and docketing the appeal with the United States Court of Appeals for the Sixth Circuit shall be, and is hereby, extended to the 12th day of September, 1956.

(signed) Frank L. Kloeb,
Judge

Approved:
(signed) Doyle, Lewis & Warner
Counsel for Appellee, The New York Central Railroad Company
(signed) Joseph A. Robie
Counsel for Appellants, Brotherhood of Railroad Trainmen, a Voluntary Association, et al.

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[1]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION
Civil Action No. 7439
Hearing on Motion for Preliminary Injunction & Merits

The New York Central Railroad Company,
Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al., etc.
Defendants.

Transcript of Record

TRANSCRIPT OF PROCEEDINGS in the above-entitled cause of action, before the Honorable Frank L. Kloeb, United States District Judge, on Friday, February 3, 1956, commencing at 10:00 o'clock A. M.

Herbert N. Archambault, U. S. Court Reporter
MAin 9791, Toledo, Ohio

[2]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action No. 7439

Hearing on Motion for Preliminary Injunction

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al., etc.,

Defendants.

APPEARANCES:

James L. Highsaw, Jr., Esq., of
Washington, D. C., and
Harold Heiss, Esq., of
Cleveland, Ohio,
Mulholland, Robie & Hickey,
By: Joseph Robie, Esq.,
In behalf of Railroad Brotherhoods.

Doyle, Lewis & Warner,
By: Milo J. Warner, Esq.,
Wesley A. Wilkinson, Esq.,
In behalf of the New York
Central System.

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MR. ROBIE: If the Court please, I would like to introduce to the Court Mr. James L. Highsaw, Jr., of our Washington Office, a member of the Bar of the District of Columbia and the State of Tennessee. I would like to move his admission.

I would also like to introduce Mr. Harold Heiss, of the Cleveland Bar, who represents the Brotherhood of Locomotive Firemen and Enginemen.

THE COURT: That may be done.

Gentlemen, a Complaint was filed on January 20th in Civil Action No. 7493 together with a Motion for a Temporary Restraining Order. The Court granted the motion as of that date, and an Order To Show Cause was issued to be returned on January 26 at 10:00 o'clock A.M. That date was changed to February 2nd by agreement of counsel on both sides. We were unable to get together yesterday because of the inability of counsel to be here.

We are now here on the Order To Show Cause.

The Court asked that pre-trial briefs be filed. Those have been filed. I assume that counsel are now prepared to present the matter on its merits, although ostensibly we are here on the Motion For a Preliminary Injunction. Is

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that correct?

MR. WARNER: Yes, if the Court please.

MR. HIGHSAW: Yes, Your Honor.

THE COURT: How do you want to proceed? Do you have some testimony that you want to offer, or do you want to proceed in argument?

MR. WARNER: An Answer was filed on Tuesday of this week, I think, by the Defendants.

THE COURT: That is correct, on January 31st.

MR. WARNER: If I may make a suggestion, Your Honor, that would be that each side make an opening statement to the Court and endeavor to define specifically the issues, if any, and then we can determine possibly from that point what witnesses, if any, may have to be called. Is that satisfactory; is that agreeable?

MR. HIGHSAW: I have a suggestion to make. As Your Honor knows, this matter came up rather suddenly and we had only a few days to get in our Answers and so forth, and in our brief we stated that even if the allegations were true with respect to the nature of the issues, that as a matter of law they were not entitled to relief un-

der the Norris-LaGuardia Act, and we are more convinced than ever of that.

My suggestion is that I would like to put this case in a posture so that Your Honor can dispose of it on the law

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this morning, and I would like to have leave to amend our Answer by ading a new paragraph 28, which would simply state that the Complaint fails to set forth matters or facts which justify or raise a question or action on which relief can be granted. It does not raise any new issue, because the Plaintiff, if we went ahead to try it out with witnesses and so forth, would still have to establish to Your Honor's satisfaction, — even if they establish their factual situation under Paragraph 20 as to the purpose of the strike, — they would still have to establish that they were entitled to relief, to the relief that they request.

So I would like to ask Your Honor's leave to amend the Answer orally in that form and argue on the question of whether or not legally they are entitled to the relief they request, regardless of the Complaint.

MR. WARNER: We feel we should have in written form this proposed amendment. I gather it is simply a plea to the sufficiency of the Complaint, is that correct?

MR. HIGHSAW: That is all. That is all it is, a simple statement that the Complaint does not state a cause of action on which relief can be granted.

MR. WARNER: There is no allegation of additional facts?

MR. HIGHSAW: No. We would ask leave to do that, but if Mr. Warner wants it we could write it in the An-

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swer. If that is required, we could insert it in the Answer physically.

MR. WARNER: We have no objection to that.

THE COURT: I have no objection if you want to insert that additional paragraph in the Answer as filed.

MR. WARNER: Do I gather, Mr. Highsaw, that you

desire to argue to the Court the question as to whether or not the Complaints states a cause of action?

MR. HIGHSAW: Based upon all of the factual allegations in the Complaint.

MR. WARNER: Now, is that based upon the issues raised between the Answer and the Complaint, or is it based upon an admission that the Complaint states the facts as they are?

MR. HIGHSAW: So far as the Complaint alleges a factual situation, it does not, we feel, allege legal conclusions. For the purposes of this one motion as it stands, it is based upon the acceptance of the factual allegations contained therein. We, of course, deny those facts, Your Honor.

So far as the factual allegations go, — — the allegation in Paragraph 20 specifically, that the purpose of the strike, that the sole purpose of the strike is to prevent the closing of the North Toledo Yards, — — we deny that.

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We feel the evidence will show otherwise.

Even if that is true, this is a perfectly legal strike under the general law and under all the statutes, and that the Plaintiff is not entitled to the relief that they request.

THE COURT: Fundamentally, I take it, you are getting at this question: that you are setting aside, for the purpose of this argument, the position that you have taken, that the closing of the yard would encroach upon and violate conditions or certain agreements or agreements that were entered into in 1932 and amended in 1948 for the division of work between the Michigan Central and the New York Central Divisions.

MR. HIGHSAW: For the purposes of this argument.

THE COURT: Yes, and the position you are taking is, regardless of that question, the intent or the objective of closing the yard raises a labor dispute that comes within the purview of the Norris-LaGuardia Act, is that correct?

MR. HIGHSAW: That is one point, Your Honor, and we also say that aside from that Act it raises a dispute between the parties and the Brotherhoods have a legal right to strike irrespective of those provisions, and it raises a dispute within the meaning of that Act, so that it is applicable.

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THE COURT: The right to strike would have to be based upon an alleged labor dispute, is that correct?

MR. HIGHSAW: Not in any statutory sense, Your Honor. It is our position that in the railroad industry the right to strike is not prohibited by any statute. It is not prohibited by the Interstate Commerce Commission or by the Railway Labor Act, that the only provisions which affect the right to strike are the provisions of the Railway Labor Act, but which are not designed to prohibit a strike, Your Honor, but simply to delay a strike by providing various measures for mediation, voluntary negotiation and arbitration, and in some circumstances, if the President and the National Mediation Board deem it necessary to protect the public interest, the appointment of a Presidential Emergency Board, but that those are the only statutory provisions which have any effect upon the Brotherhoods' right to strike; that there has been no claim in this case, as I understand it, of any violation of those provisions; that there has been mediation. They have gone through the Mediation Board, Your Honor, and they released this case on December 16th and a strike was threatened on January 21st, and the Mediation Board and the President did not see fit to appoint an emergency board. Therefore, it is our position that the railroad Brotherhoods had a legal right to strike on January 21st without regard to statutory

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provisions, even for the sole purpose of preventing the closing of the North Toledo Yard.

Our second position is that that dispute over the clos-

ing of the North Toledo Yards, assuming there is nothing else involved in it, raises a labor dispute within the meaning of the Norris-LaGuardia Act so that the provisions of that Act attach.

THE COURT: You are maneuvering, then, into a situation where you rely upon the common law right to strike, is that correct?

MR. HIGHSAW: That is correct.

THE COURT: And you feel that at the same time the Norris-LaGuardia Act would forbid any Court from intervening and enjoining that right?

MR. HIGHSAW: That is correct.

THE COURT: In effect, that is your position, is it not?

MR. HIGHSAW: That is correct. We have already cited in our trial brief a number of federal cases, Federal District Court decisions, Supreme Court and Appeals Court decisions, which point out that under the Norris-LaGuardia Act the question of the validity or legality of the strike is not in issue, but whether or not it is a labor dispute within the meaning of Section 113 (c), I believe it is.

THE COURT: You are discounting the existence of

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any agreement then.

MR. HIGHSAW: We are discounting for this purpose, Your Honor, the existence of any agreement.

MR. WARNER: May it please the Court, I think that at least in part Mr. Highsaw has helped, — — I mean the first part of his statement, — - has helped to narrow this down to the real issue, and that is whether or not the Brotherhoods have a right to strike solely because of the closing the North Toledo Yard.

In the consideration of this case, — — and I think we have submitted it to the Court in our trial brief with some authorities, — — we feel that two matters must be kept distinctly separate, namely, (1) the closing of the North To-

ledo Yard; (2) the effect, if any, of the closing, — — that is, if any effect, — — upon the terms or conditions of employment of the railroad employees and members of the defendant Brotherhoods.

Now, on the first point, we contend that it is the determination of railroad matters, and the second is not in this case.

We are not in any way in this case asking the Court to foreclose any rights, the rights, if any, that the defendants may have under the statutory laws, particularly the Railway Labor Act. The railroad asks the Court only that the employees and their representatives be enjoined from striking because of the closing of the yard.

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The situation has developed so that the plaintiff railroad has no other recourse than to this Court to protect itself from a strike because of the closing of the yard. The restraining order that the Court issued, that we asked the Court to issue, simply restrains the defendants, enjoins and restrains the defendants, from conducting any strike, work stoppage, or any other act of economic coercion to force or keep plaintiff from closing its North Toledo Yard.

The railroad is not asking the Court to determine the second matter, namely, anything that we feel would come under the category of a labor dispute affecting working conditions.

We feel that this dispute in its larger sense, as considered by the National Mediation Board, — — that is, in its larger sense, — — embraced two matters which must be kept separate and distinct. It embraced those two matters, because at the outset, as set out in detail in the Complaint, last July and August the Brotherhoods said, "You close the yard and we strike."

Now, when they declared a strike, later on the National Mediation Board came in under the Railway Labor Act, particularly under Section 5 of the Act, which is Section

155, I think, of Title 45, Paragraph 1 (b), which refers to any other dispute than a labor dispute, and states that the Board may offer its services in mediation in any labor

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emergency. They came in under that provision in an endeavor to straighten the matter out. They held conferences; that is, with reference to the closing of the yard, and those conferences were unsuccessful.

The National Mediation Board so held and closed its file twice. It has made the statement clearly, I think, in its communications to the Brotherhoods, and it did so because it had no further jurisdiction in the matter. They held that it was not a labor dispute, the matter of the closing of the yard.

I think they also found, and so advised the Brotherhoods, that there were no agreements with reference to the closing of the yard, and they advised the Brotherhoods that if they felt there were any arbitrary changes in any existing agreements they had their rights, that those grievances should be filed with the Railroad Adjustment Board under the Railway Labor Act. None have been filed, no agreement has been asked, no change in the agreement, has been asked of the National Mediation Board or the Railroad Adjustment Board by the defendant Brotherhoods.

We are not asking this Court in any way in its order declaring the rights of the parties with reference to the closing of the yard to pass upon any labor dispute or any question of working conditions, nor the determination of any agreements, for under the Railway Labor Act there are procedures open, still open, not foreclosed, to the

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Brotherhoods and their members.

The issue, we feel, is very clear cut: we are simply asking that this question, — — which is not a labor dispute, namely, the closing of the North Toledo Yard, that it is

a matter for the determination of management, — — be clearly determined by this Court as one for which the Brotherhoods cannot strike alone.

Now, I think there is an attempt by the defendants to confuse those two matters and to say that, "Well, the closing of the yard affects working conditions." Realistically speaking, that may be true. Any decision of management of any importance at all is apt to affect working conditions, but when it does do that then the Brotherhoods and their members have the clear cut right to negotiate with reference to those things which are within their realm of negotiation and to avail themselves of the Railway Labor Act, which was passed in 1926 and amended in 1934.

At the time it was amended, in 1934, it is somewhat significant and I would like to call Your Honor's attention here in open court to a statement which was made by Representative LaGuardia, who was one of the co-authors of the Norris-LaGuardia Act, in debating the Railway Labor Act, or the amendments to it in 1934.

He said this:

> "The workers could not and would not think of going on strike before all the remedies provided in

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> the law have been exhausted. When the railroads have complied they would not, as has been suggested, be deprived of any relief which they may have in law or equity."

I think it is proper to bring this out, — — and I think the Court is familiar with it, — — but in the debates and in the hearings on the Floor of the House with reference to the Railway Labor Act it was stated by those proponents of the Act and in the hearings with representatives of labor that in return for the compulsory provisions of the Railway Adjustment Board and the determination of disputes, regarding labor and working conditions, that they were giving up the right to strike under certain circumstances.

Now, Mr. Highsaw in his statement to the Court implied, or seemed to imply, — — I will put it this way: he seemed to overlook the provision of the Interstate Commerce Act and of the Railway Labor Act the basic reasons, namely, that there should be no interruption in the flow of interstate commerce and the transportation of people and freight for industry.

That is the basic reason for this Act: so that there will be no interruption of interstate commerce by a strike called because of a decision, which is management's decision, namely, the closing of the yard solely.

I might say that the plaintiff has no objection, if the Court should so determine, to expressly spell that out, that

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the Court's order applies solely to the closing the yard, and that any matters concerning the working conditions of the employees as the result of the closing of the yard are not in any way determined by the Court.

I think it has been held by nearly all of the Federal District Courts, certainly by the United States Supreme Court, that the determination of the applicability of any agreements, if any, concerning working conditions are not for the determination of the Court so long as administrative relief is open to the parties. I think they even go so far as to hold that they are certainly not subject to collateral attack.

In this matter the National Mediation Board officially found that there were no agreements between the parties relating to the closing of the yard itself, and the only matter, — — we want to emphasize this, — — the only matter on which we have come to this Court for relief is the closing of the yard.

The National Mediation Board found there were no agreements between the parties, and they found that there is no application for such agreements, and at that same time they advised the Brotherhoods, through their repre-

sentatives, that if they decided they felt that there were any arbitrary violations of the agreements that might exist between them, and they specifically referred to some, that those should be taken up with the Ra ray Adjustment Board.

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They have not been taken up by the defendants.

Now, at about the same time that the Court issued the temporary restraining order, the Brotherhoods sent a wire to Mr. Horning, Vice President of the New York Central Railroad in Charge of Personnel, which he received a day after the telegram he received from the secretary of the National Mediation Board; advising that the Brotherhoods had called this strike for January 21st.

They sent a wire and they endeavored to bring back in and link up the closing of the yard with any grievances that they might have as a result of the closing.

They are two distinct, separate matters.

It is only on the first that we ask relief from the Court. In no way do we ask this Court by its order foreclose any relief that they have under the statutory laws, particularly the Railway Labor Act.

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MR. HIGHSAW: We are taking the position that the Railroad Brotherhoods had a right, when they were notified by the New York Central Railroad that they proposed to close the North Toledo Yard, which would transfer the workers without regard to the effect upon any other agreements, that they had a legitimate labor interest, in behalf of their members, to say to the New York Central, "We want to bargain with you about that issue and we want to reach an agreement with you about that issue as to whether you close the yard or not, or if you close the yard maybe give us some other concessions in some other direction."

Now, it is our position, for the purpose of this argument, without engaging in it, that the Railroad Brother-

hoods had that legal right as a matter of right under common law and that it was not affected by any statute whatsoever. I think it is recognized, or I believe Your Honor will recognize, that the basic right to strike is not derived from the statutes; it is derived from the common law.

Of course, it is true that subsequent statutes in a field can affect that right. They can limit or they can expand it. In the case of the National Labor Relations Act, which operates outside of the railroad field, they have limited the right to strike in some respects, but here we start with the question, and the first question we have to address ourselves to, is whether or not under common law these

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railroad Brotherhoods can legitimately ask the New York Central Railroad to sit down and talk with them about the closing of the yard and bargain with them about that, to try to get them, if you please, not to close the yard, or perhaps get them to adopt some position somewhat less than that such as other concessions.

We say that as a matter of common law they had that right. Plaintiff's counsel has not cited any decision to the contrary. I may not have researched all the law, Your Honor, because this matter came up fairly recently, but we have fairly exhaustively searched the law in federal cases and I could not find any federal decisions of the District Courts, United States Courts of Appeal or the Supreme Court which said that a labor organization did not have that right.

We have cited in our trial brief to Your Honor two cases which we think support basically that right.

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That brings us to the Railway Labor Act.

The Plaintiff's counsel has suggested that somehow this strike becomes unlawful because of some provision of the Railway Labor Act. The only provision of the Act

which he actually cited in respect to that, as I understood it, was some reference to the National Adjustment Board, which is under Paragraph 3.

For the purposes of the point which we are discussing now, the provisions of Section 3 of the Railway Labor Act, which deal with submitting certain grievances and arguments about interpretations of contracts to the National Adjustment Board, have no application whatsoever, because by assumption we are not talking about that. We are now talking about collective bargaining over the continuance of the operation of the North Toledo Yard and a strike on behalf of the Brotherhoods to require the railroad to bargain with them about that. That is what it really amounts to, because up to now, Your Honor, the railroad has not sat down face to face across a table with these employees, and so much as said one word about this question of maintaining the North Toledo Yard. If we are

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getting around to the question of discussing the Railway Labor Act and violations of the Railway Labor Act, that is certainly one thing that should be looked into. Of course, the railroad from the very beginning has taken the position that they did not have to discuss that. This question never got a chance to be settled, this narrow question we are talking about now never got a chance to be settled as the Railway Labor Act intended it to be settled by voluntary negotiations.

Now, if there is any doubt that the Railway Labor Act intended it to be settled in that way, I refer Your Honor to Section 152, 45 U. S. C. A., and I will read that whole section so that I will not leave anything out.

Paragraph 1:

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such

agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Paragraph 2:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between rep-

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resentatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Now, that language is clear, it is unambiguous, it is specific, and it is open to only one reasonable interpretation, Your Honor, and that interpretation is that Congress intended that any dispute from any source, if it threatened to interrupt interstate commerce, there should be an effort to settle it by negotiating and bargaining between the carrier and its employees on the properties. There can be no other interpretation of it.

Now, that is a limitation on the right of the railroad unions to strike; that is, they have to sit down and offer to bargain and make a reasonable effort to settle any dispute which they may have. They did that in this case. There is no other allegation to the contrary. They made every effort from the beginning to attempt to get the railroad to negotiate about this and the railroad took the position that it was not a matter they should bargain about, so that there was no bargaining across the table with respect to it.

Furthermore, Your Honor, Section 155 (b) (2), 45 U. S. C. A., also contemplates that any dispute which threatens an emergency in interstate commerce a Mediation Board shall proffer its services. Now, that is to be distinguished from a situation in which one party or the oth-

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er can ask the Mediation Board to step in and it can step in against the wishes of the other party and maintain the

status quo. The other section requires that both parties accept the proffer.

THE COURT: Inasmuch as you are discussing Section 155, let us get to the third paragraph (b).

MR. HIGHSAW: That's right, Your Honor, that is the paragraph I am referring to.

THE COURT: (Reading):

> "If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter."

I am taking it as an accepted fact that if the Mediation Board had proceeded further after finding as it did, if they had proceeded further and had endeavored to induce the parties to submit their controversy to arbitration, — — that is, the controversy with reference to the effect upon the employees of the North Toledo Yard, — — that the Brotherhoods would have refused to arbitrate that question.

MR. HIGHSAW: I cannot categorically give Your Honor that answer, because as far as I know, — — and I

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have gone through all the written records pertaining to this mediation and I have not seen any proposal by the Mediation Board for that, or any refusal. So I can't say.

THE COURT: Regardless of whether the Mediation Board has made any such proposal, — —

MR. HIGHSAW: Of course, they have that right.

THE COURT: (Continuing) . . . if the Court did make that proposal now, you would refuse it, is that correct?

MR. HIGHSAW: I would have to consult, Your Honor, with the officers of the Brotherhoods. For purposes of the legal question I would state to Your Honor that they have under the Railway Labor Act a right to refuse.

Whether they would or not, I would have to consult with them.

THE COURT: If you accepted and the railroad refused, then the railroad would be in poor grace in this Court, would it not?

MR. HIGHSAW: In Your Honor's mind that might well be, yes.

THE COURT: Well, it is a fact, is it not, that they must exhaust all available efforts provided by the Act, to mediate, arbitrate and negotiate before they can come into this Court on any question involving wages or labor disputes.

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MR. HIGHSAW: I would think as a matter of general equity, had they not done it the Court could refuse an injunction on that basis.

THE COURT: I take it that the failure of the Brotherhoods up to this point to invoke arbitration on the matter of wages and working conditions of the employees involved in the North Toledo Yard is an indication that they do not want to get into that question at this point.

MR. HIGHSAW: In arbitration?

THE COURT: That's right. How many employees are involved?

MR. HIGHSAW: My understanding, Your Honor, is, — — well, I think the evidence would show that we have two separate factual problems, but there are in the neighborhood of seven or eight yard crews. It may vary. It would come in around the general area of thirty-five employees.

THE COURT: Thirty-five employees are involved. Now, assuming that the railroad takes the position, as I believe it does, that it is willing to arbitrate or negotiate on the effect upon these thirty-five employees after the closing of the yard; taking that as their position, and taking your position, as the Court believes it to be, that you

are not interested at this point in arbitrating the question of the effect upon these thirty-five employees as a re-

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sult of the closing of the yard.

If the Court should suggest the arbitration of that question in advance of the closing of the yard, would you be amenable to such a suggestion?

MR. HIGHSAW: I am authorized to state to Your Honor this morning that the Railroad Brotherhoods are willing to sit down across the table, which they have never had the opportunity to do up to this moment, with the officials of the New York Central Railroad, provided that they are officials of the proper level and they are not relegated to some subordinate officials who then have to run off the yard and say they cannot make an agreement, to discuss the entire problem.

THE COURT: I am not getting into that question, the question of management; I mean on the election of the managers of the railroad to effect some physical change in their railroad set-up.

MR. HIGHSAW: It is our position, Your Honor, that as to the authority of the railroad management to effect a physical change, namely, the closing of this yard, that that is a subject which the Brotherhoods have a legal right to negotiate with the management about, aside from these other questions.

THE COURT: Let us take up an analogous situation. Suppose that a railroad management came to the conclusion that the operation of Train 26 between Toledo and Colum-

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bus is unprofitable and that experience has proven it so, and suppose that the railroad management has received authority from the proper governmental officials to discontinue the operation of that particular train, is it the position of the Brotherhood that they would have the right to strike over that decision of management?

MR. HIGHSAW: It is the decision of the Brotherhood that if the Brotherhood believed that the discontinuing of that train would have an adverse effect on the employees that they represent, — —

THE COURT: (Interposing) No, I am not reaching that question.

MR. HIGHSAW: Your Honor, the Brotherhood, when they negotiate about a matter like that, they have to have some reason.

THE COURT: If it were perceived that the discontinuance of that train would, as it certainly would, affect the employment of at least the train crew, isn't it the purpose of the Railway Labor Act that the questions involved as to wages, seniority and working conditions be submitted to arbitration; isn't that the purpose of the Act?

MR. HIGHSAW: As a legal proposition, no.

THE COURT: Separate and distinct from the decision of management to discontinue a certain operation.

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MR. HIGHSAW: No, Your Honor. I don't believe that that is a correct interpretation of the Act. I believe that under the Railway Labor Act, under Section 2, which deals with all disputes, that there is no limitation on the subject matter of the dispute, that the Railway Labor organizations would have a right to sit down and negotiate with the railroad about whether that train should continue because of the loss of employment in order to protect those employees.

THE COURT: Suppose the railroad was willing to sit down and ameliorate the condition of the train crew by arbitration?

MR. HIGHSAW: If they would negotiate and mediate and no agreement was reached?

THE COURT: That's right.

MR. HIGHSAW: Arbitration is not compulsory; it is voluntary.

THE COURT: But the railroad would arbitrate.

MR. HIGHSAW: That would not in any way under the Railway Labor Act affect the legal rights of the Brotherhoods involved. Some people might not like the decision of the Brotherhood; some might think they acted perhaps, — — .

THE COURT: (Interposing) Then it is the decision

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of the Brotherhoods that they want to participate in management problems, is that it?

MR. HIGHSAW: I say it is the position of the Brotherhoods, given this kind of a problem which they have here, that they can sit down and discuss and negotiate it. It is a very broad phrase, which has no legal meaning under the Railway Labor Act.

THE COURT: Can counsel on either side point to a similar situation, to some precedent?

MR. HIGHSAW: I think this Diamond Full Fashion Hosiery case comes as close as I can find, Your Honor.

THE COURT: A higher Court determined that it involved directly the wages and working conditions or conditions of employment of the employees.

MR. HIGHSAW: It involved the closing down of the plant, Your Honor, and that is what projected the strike, and that was a management decision.

THE COURT: But they were not operating under the Railway Labor Act.

MR. HIGHSAW: That is my point, Your Honor, that, — —

THE COURT: (Interposing) They had no Railway Labor Act to resort to.

MR. HIGHSAW: But as a matter of general law that condition establishes our right to strike.

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I have cited in my trial brief a number of statements and quotations from Courts which have held that the Railway Labor Act does not prohibit a strike. All it does is

two things, — — well, there are three situations in which the Railway Labor Act can affect the right to strike.

THE COURT: I don't believe willy-nilly you want to strike, do you?

MR. HIGHSAW: No, Your Honor. We would like to sit down and negotiate. We would like to do that with the New York Central Railroad about the closing of the yard, but they would not do it with us, but they had gone on and, — —

THE COURT: (Interposing) I take it that this is a test case on a question of principle, is that right?

MR. HIGHSAW: It is not so far as we are concerned.

THE COURT: If your theory would prevail here, then anytime any railroad would want to make a change in its physical set-up and operation its directors would be required to sit down with the Brotherhoods, and come to an agreement on the propriety of that change; is that the position you are taking?

MR. HIGHSAW: Yes, Your Honor.

THE COURT: Then that's it.

MR. HIGHSAW: Our position is that they would

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have to come to an agreement with respect to that change with respect to the continued employment of that personnel.

THE COURT: No. You are getting away from the question now.

MR. HIGHSAW: It is not, Your Honor, in a narrow sense. The Brotherhood would not go in and negotiate with the Board of Directors over some non-labor matter that they had in mind on the railroad side of the fence, but they might bring it up; they would talk about the interest of their employees, the unions would.

THE COURT: If you want continued employment or you feel there is some encroachment upon the prevailing working conditions of these 35 men and you want that to be determined, the Court is now in a position to say to you

"Gentlemen, go out and arbitrate this question and negotiate it, and if you cannot negotiate, submit it, and decide the question in advance of the closing."

You don't want to do that, is that it?

MR. HIGHSAW: That is what we are willing to do.

THE COURT: That question, and that question alone, not the advisability from the management viewpoint of closing the yard.

MR. HIGHSAW: We want face-to-face bargaining.

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We would like to try to settle it across the table.

* * *

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MR. HIGHSAW: If, for example, they could work out an agreement with the New York Central Railroad that when the trains came out of Stanley Yard that the crews which do it up to the jurisdiction of the Toledo Terminal area, that then it would be taken over by a crew to Toledo, that might be satisfactory. I don't know, but I am just suggesting it.

THE COURT: So it is your position that that service would be somewhat changed.

MR. HIGHSAW: It would be ended.

MR. WARNER: I don't agree it would be ended at that yard.

MR. HIGHSAW: That particular work would be

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ended.

THE COURT: But they would receive some other comparable employment, would they not?

MR. HIGHSAW: Your Honor, that brings out the necessity of the railroad and the Brotherhoods for sitting down on these questions.

MR. WARNER: I think I should interrupt here.

MR. HIGHSAW: Please.

MR. WARNER: I think this is important, since you brought up the question. This is a matter that we are not

presenting to the Court, but I am referring the Court to it because of the trend of the argument here and the discussions with reference to it.

There are two lodges of the same Brotherhood, and one lodge is at Stanley Yard, the other covering the North Toledo Yard of the New York Central Lines West in this area. They are subject to the same regulations of that one Brotherhood. It is between them to determine primarily, as a practical proposition, what they want to do and then negotiate through their Brotherhood with the carrier. We have to differentiate the lodges under the Brotherhoods.

On the question of the carrier negotiating with the Brotherhood, since it covers both lodges he can't play one lodge against the other, because that is not his business. I think I have made that point clear. I do not know all of the

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Brotherhoods' problems, but that is one of their practical difficulties, and also in their failure to negotiate the working conditions.

Now, one thing more. There has been a lot of water over the dam on the question of negotiating working conditions before the closing of the yard. A real endeavor was made, starting in July and August, to bring that about, but the Brotherhoods apparently did not settle their own problem between these two lodges, and the railroads were trying to initiate it and the Brotherhoods would not settle the issue between themselves. They said, "We will simply negotiate the closing of the yard." That brings us to a practical proposition when they said, "You have to negotiate before it is closed." There is nothing to compel them to negotiate. It is not compulsory that they file these grievances, not at all compulsory.

THE COURT: I am trying to arrive at the clear cut question, which I think counsel will agree is now involved, and that is whether or not on a problem of management, as to the continuance or discontinuance of a unit in the

operation of a railroad whether that is a problem on which management must sit down and come to an agreement with the Brotherhoods.

MR. HIGHSAW: But if the Brotherhoods wish to negotiate with them on it, then, ——

THE COURT: (Interposing) That is your issue. Let

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us take another example. I assume that with the extended use of diesel locomotives that the continued operation of certain of the old steam roundhouses has been rendered unfavorable and costly and unnecessary in many instances throughout a line as extensive as the New York Central System.

Now, it is the position of the Brotherhood, is it, that before such a unit be discontinued that management must sit down with the Brotherhoods and discuss and arrive at an agreement before closing that particular roundhouse?

MR. HIGHSAW: If the Brotherhoods wish to bargain, yes.

THE COURT: Even though the railroad management might be willing in advance to sit down with the Brotherhoods and negotiate and arbitrate the future of the men working at that roundhouse who would be involved?

MR. HIGHSAW: The future of the men working in that roundhouse, Your Honor, is a part of the problem, because their future is one of two things. Their future is (a) if the roundhouse is continued, they will work there; and (b) if not, they will work someplace else.

THE COURT: That's right.

MR. HIGHSAW: Now, the Brotherhood might sit down and negotiate with the railroad and all the railroad was willing to do in the way of substituting, let us say,

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employment for those people someplace other than the roundhouse was completely unsatisfactory, in that instance

the Brotherhood would take the position with them that they should not close it down.

THE COURT: Even though there would be no work for them to do?

MR. HIGHSAW: I don't understand?

THE COURT: Even though there would be no future work at that particular roundhouse?

MR. HIGHSAW: No jobs.

THE COURT: No work there.

MR. HIGHSAW: I don't think the Brotherhoods would ever argue that where there is no job at all for them to do the Brotherhoods would take that position, but they should make whatever use can be made of it and employ those people.

Now, there have been countless negotiations with reference to diesel equipment. They have gone through the Presidential Emergency Boards and Mediation Boards on the problems arising out of that for 15 years.

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THE COURT: The Court is suggesting to both sides that the question of the protection of these 35 employees in their employment be negotiated and arbitrated, and that you don't want to do.

MR. HIGHSAW: We are willing to sit down with the yards open, as I said, operating, so that we can say to the railroad that we do not like, — — we think what you are proposing to do with these employees is unfair, and if

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they cannot reach an agreement on that aspect of it, then they have the right to strike. After they had negotiated that on a round table basis and had gone up on Mediation Board procedures, maybe it could be arbitrated. I don't know.

Railroad counsel has indicated it was not compulsory. The only thing that is compulsory is if an Emergency

Board is appointed. In that case, everyone must wait until they have heard the matter.

We are willing to sit down on the basis I have outlined.

THE COURT: You are willing to sit down only on the basis as to the feasibility of the closing of the yards from the standpoint of management; in other words, you are insisting that that point be negotiated?

MR. HIGHSAW: We are willing to have the question of whether the yard ought to be closed in the light of its effect on the employees included as one of the bargaining elements.

THE COURT: No. If it has some adverse effect on the employees, I am asking that you arbitrate that to their satisfaction.

MR. HIGHSAW: There are two problems here. One problem is, what do you do with the employees in some other category of employment, assuming the yard is closed.

THE COURT: That is a question this Court knows

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nothing about.

MR. HIGHSAW: In other words, whether the yard ought to be closed at all in the light of the effect it would have on the employees, Your Honor, and that is the question we would like to discuss with the railroad, not the railroad management's decision. Whatever their alleged reason for it was, that was taken up at the meeting of the board of directors.

But the question of whether or not, — — let us take up this situation: suppose you had a case where there were 10,000 employees in a given yard and they were going to close down operations and they would be completely out of jobs, posing another type of problem. We would say, whatever the reasons, we wouldn't argue about their reasons, but we would argue our reasons, namely, that it was important and vital to the organizations and public interest

and any consideration to have that yard kept open and those people kept employed as an overriding and important consideration, and that is the kind of bargaining we would advance, Your Honor, not that we would come in and say to the railroad, "We just don't like your decision." It wouldn't be within that narrow a framework, Your Honor, but it would be in the much broader framework of whether or not it was in the interest of the employees and their continued employment in that yard, whatever that might be in those circumstances, and it might vary from situation to situation.

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In the paving contractors' case I cited, Your Honor, the employees there had an interest in continuing their employment on the machines then operating. A paving contractor made the decision that he wanted to operate more economically with cement mixers, which would, of course, throw workers out of work.

There it was not a question of the union's mere desirability, Your Honor, because that is never before the Courts in these situations. The union said, "Our interest is in keeping those men employed, and we either want you not to use the mixers, or if you do, we want you to use the same number of men. It falls within the same category of problem we are here discussing. That was affirmed by the Supreme Court of the United States.

THE COURT: That is true, but I want again to call your attention to the fact that in the concrete mixer case you had no Railway Labor Act, that defined the steps that might be taken to alleviate that situation.

MR. HIGHSAW: All of the steps that may be required to be taken by law have been taken, and that is what we are discussing. These people are asking for an injunction on the basis that it is an illegal strike, so they have to prove there is some violation of something. All of the steps to be taken by law have been taken.

THE COURT: I don't agree with you. I am trying

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to impress that upon you.

MR. HIGHSAW: I would like to discuss what steps you have in mind.

THE COURT: I have in mind Section 155.

MR. HIGHSAW: The arbitration provisions?

THE COURT: That's right.

MR. HIGHSAW: Those provisions are not compulsory.

THE COURT: I understand that they are not compulsory, but do you want to come within it? That is what I am trying to get at. The railroad would not have to, but they would not be in good grace in this Court if they refused, as I said before.

MR. HIGHSAW: That is on the question of working conditions?

THE COURT: That's right.

MR. HIGHSAW: There is this, too: conversely, if the employees did not voluntarily agree to arbitration, various people might not think it was desirable, but it would not affect their legal right to strike in any way, even though there is a refusal by the railroad, but it might affect its right to get an injunction.

Now, let us get at what the Plaintiff is saying. The Plaintiff is saying that this dispute over the closing of the

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yard is outside of the framework of the Railway Labor Act, and that it was a dispute that the Mediation Board said that it wouldn't take jurisdiction of.

MR. WARNER: May I interpose something here? Exhibit 1, attached to the Defendants' Answer, clearly states the specific question in dispute.

THE COURT: What page are you referring to?

MR. WARNER: It is an exhibit attached to the Answer, Your Honor.

MR. HIGHSAW: That is our invocation of mediation services.

THE COURT: I have it.

MR. WARNER: Under "THE SPECIFIC QUESTION IN DISPUTE" it says the following: "Management arbitrarily closing North Toledo Yard, without negotiations."

MR. HIGHSAW: Read the rest of it.

MR. WARNER: The Court has it before him.

I want to say this, too, while I am on my feet. The railroad was ready to sit down and discuss the matter, but they would not do it, because, they said, "You can't close the yard without negotiation." That is exactly where he ends up on his circular argument. He comes right back to that point, and we are right back where were were in July.

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MR. HIGHSAW: Either one of two things has to be clear. Either this is a dispute cognizable under the Railway Labor Act; that is, it has to be a dispute between the employees and the railroads which is recognized under the Railway Labor Act as a valid dispute, and there is some provision in the Railway Labor Act with respect to the handling of it or there isn't.

If the first is true, then we say clearly there is a valid right to strike, and the only thing in the Act which would prohibit us from striking is when the Mediation Board takes jurisdiction, — — and, of course, the Brotherhood did not strike in those circumstances, — or if an emergency Board had been appointed, and none has been appointed in this case, so that there is not one provision in the Railway Labor Act which prevents the Brotherhood from striking if the dispute is a dispute which comes within the four corners of any section of the Railway Labor Act, and I have argued that it does under Section 2, because of the fact that the Mediation Board did take jurisdiction of it.

If we go to the other end of the horn and say that there is not a dispute under the Railway Labor Act or where any of the provisions of the Act are applicable, then it is

clear that the Railway Labor Act does not prohibit the right to strike.

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MR. WARNER: As I get counsel's argument, it boils down to this: that the Brotherhoods, or the Defendants, can strike over any matter that in their judgment they feel affects their members.

At all times, commencing with this dispute in July, or June, 1955, the railroad representatives, the railroad management, have stated that they would be glad to sit down

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and discuss what they call the working equities with the Brotherhoods resulting from this closing; in other words, to do that which the Court has suggested be done before the yard is closed. That was endeavored to be done throughout. The Brotherhoods took the definite stand that, first, they had to negotiate whether management could close the yard. That is made abundantly clear by what counsel calls the application or invocation of Mediation services before the National Mediation Board and it is an exhibit attached to the Defendants' Answer. It is specifically stated there. I referred to it a few moments ago.

Now, that has been the situation up until the time and at the time we came into Court to ask for relief and ask for a temporary restraining order, which asks that the Defendants be restrained from striking or exercising economic coercion to keep the railroad from closing the North Toledo Yard.

Counsel has now, — — if I can gather what he has said; it hasn't been too clear to me, — — but he has simply stated that they are willing to start to discuss whether that yard should be closed. They have not indicated that they are willing to negotiate over working conditions which might result from the closing. Management has a right to close the yard.

As the situation stands now, they are in no position, no

equitable position, having refused, in effect, and failed,

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let us say, to discuss working conditions regarding that closing.

Now, a six-month period having passed; the Plaintiff having complied in every respect with the suggestions of the National Mediation Board; the Plaintiff having deferred, at the request of the Mediation Board, the closing of this yard for six months as it has worked out, — — and I might say it was deferred for the period during which the Board did come in to see what they could do, — — having done that, they are in no position now to ask the Court to change the situation as it now exists where management has made a decision.

Again, I say, the Plaintiff is not asking the Court to foreclose any of the rights of the Defendants to negotiate in regard to working conditions and the matters that properly come under the term of "labor dispute", but that we are entitled to a declaratory judgment and the Court's temporary restraining order to prevent the railroad Brotherhoods from striking because of the closing of the yard. We feel in that order the Court could make clear that that in no way forecloses their rights under the Railway Labor Act to discuss, mediate and arbitrate labor conditions, working conditions. The Court is familiar with the provisions of the Interstate Commerce Act, and some of these decisions that counsel has cited do not mention the provisions under the Interstate Commerce Act where the railroads are

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under direct obligation to continue to furnish transportation in interstate commerce, and they are very specific, mandatory and proper obligations placed upon the railroads. Because of that, the railroad asks the prevention of a strike over a decision of management.

THE COURT: We will recess until 2:00 o'clock this afternoon.

(Thereupon, Court was in recess until 2:00 o'clock P.M.)

* * * * *

Afternoon Session
February 3, 1956
2:00 o'clock P.M.

THE COURT: Any further argument, gentlemen?

Does either side desire to offer any evidence on any point that has been involved in the discussions?

MR. WARNER: I think we have, Your Honor, unless counsel for the Defendants is willing to stipulate some further things other than their admissions in the Answer. I refer more particularly to our allegations with reference to irreparable damage.

Now, they admit that the strike would close the lines west of Buffalo, and that probably, — — in fact, I am quite sure that it could be established that there would be irre-

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parable damage, — — but we have allegations in our Complaint in that regard that are not admitted by counsel for the Defendant Brotherhoods.

We did, of course, support those matters in our application for the temporary restraining order, by the verified Complaint, and by the affidavits of Mr. McGraw and Mr. Shea.

Now, if counsel for the Defendants is willing, — — and I make this just as a suggestion, — — to stipulate that if called to testify they would testify as they have already testified in their respective affidavits.

I think it would shorten this matter up. Otherwise, we feel that we should put that evidence on. The Court may have some thoughts in that matter, but that is the suggestion we would like to make at this time.

MR. HIGHSAW: Your Honor, if we could look at this for just one moment.

MR. HEISS: Tell us, please, which affidavits, you are referring to, Mr. Warner, specifically?

MR. WARNER: All right. I will get those out. First, I refer to Mr. McGraw's affidavit, which I believe is the longest affidavit, and Mr. Shea's affidavit, particularly Paragraph 8 in McGraw's affidavit, and Paragraph 3. Then, in addition to that, — —

THE COURT: (Interposing) Those affidavits are

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attached to the motion for the temporary restraining order, is that right?

MR. WARNER: That's right, Your Honor, and served upon all of the Defendants.

THE COURT: That is right.

MR. WARNER: In addition to that, there were further communications than those we have set out in the Complaint between the carrier, the Plaintiff carrier, the Defendants, and the Mediation Board. We feel we have set out in the Complaint the basic material matters, but there are these communications which we would like to introduce, copies of which have been furnished counsel for the defendant Brotherhoods.

We desire to introduce those, Your Honor, primarily to show the background nature of the negotiations with the Mediation Board and the attitude of the carrier all the way through this matter, — — and for that matter, the Brotherhood's, of course, — — and these exhibits, these communications, have been furnished the Clerk and he has already identified them.

A stipulation that these are true copies, or that these communications did occur or take place, will of course, expedite the matter.

THE COURT: Then it is your position that these affidavits, if admitted into evidence, will establish (1) that no administrative remedies remained on behalf of the Plaintiff; and (2) that irreparable damage would result if

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an injunction did not issue.

MR. WARNER: The communications first, yes,

that's right, and secondly, the affidavits on irreparable damage.

MR. HIGHSAW: The affidavits are just on the irreparable damages issue?

MR. WARNER: That's right. I indicated the paragraphs, I think. Now, of course, that would expedite matters. If we cannot get a stipulation, we would have to put on some witnesses. I won't go over every paragraph of the Answer, but I think that covers it. I have checked it with Mr. Wilkinson and I think that covers everything.

MR. HIGHSAW: I am not sure I understand counsel correctly, but Defendants are willing to stipulate that those gentlemen in the affidavits, if they were called to testify, that they would testify to what is in those affidavits.

MR. HEISS: That is, Mr. Shea's and Mr. McGraw's affidavits, is that right?

MR. WARNER: That's right.

Wait. I don't believe you finished that. I didn't get that. You would stipulate that they would so testify if they were called as witnesses, is that it?

MR. HIGHSAW: Yes. Further, it is our legal position that such testimony is irrelevant and immaterial be-

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cause we have admitted in our Answer that the strike would shut down the New York Central Lines, and we concede to Your Honor that that would cause injury in a legal sense to the New York Central Lines if the strike was illegal and if the Norris-LaGuardia Act did not apply, that we are not going to insist on a ruling at this time with respect to those matters because we want all that material to be before Your Honor and when Your Honor renders his decision he can rule on that aspect of it.

MR. WARNER: Mr. Wilkinson has called my attention to something in the Horning affidavit. Will you stipulate as to that affidavit, Mr. Highsaw?

MR. HIGHSAW: Let me take a look at it.

MR. WARNER: All right.

MR. HIGHSAW: I am not quite clear on this. What do you request with respect to the affidavit of Mr. Horning?

MR. WARNER: That you will first stipulate that the communications set forth in the Complaint took place. I think your admission is that some of them that you received were copies that were sent; but you do stipulate, do you, that they were made, those communications?

MR. HIGHSAW: Yes, I so stipulate. We are willing to stipulate that those are what they purport to be, those

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communications set forth in the Complaint.

MR. WARNER: All right. Next will you stipulate that the communications which have been marked Plaintiff's Exhibits 1 to 30, inclusive, are true copies of the communications which were actually made between the parties indicated on there, at the times indicated.

I should say in that connection that some of these exhibits are copies of the originals, which are attached to Mr. Horning's affidavit already lodged with the Court, and that the originals attached to Mr. Horning's affidavit are Exhibits 3, 4, 5, 6, 8, 9, 11.

Instead of "true copies" in the first statement, I would like to say "are the communications."

MR. HIGHSAW: I so stipulate, Your Honor.

MR. HEISS: Your Honor, during this short intermission while counsel are examining documents here, you will remember this morning that my appearance was entered in the cause. I am representing the Brotherhood of Locomotive Firemen and Enginemen and the individual defendants associated with that Brotherhood. My appearance does not go beyond that.

THE COURT: Very well.

MR. WARNER: Now, we offer in evidence separately these stipulations, and separately each exhibit covered by the stipulation.

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THE COURT: Without objection they will be admitted.

MR. HIGHSAW: No objection, except that I don't believe that the reservation I made a moment ago goes to these particular documents; I mean you are not talking about the documents, the previous set of documents introduced with respect to the affidavits pointed out to the Court on the injury, the ones I pointed out to the Court, that this does not go to those documents. Those you are now offering I have no objection to.

MR. WARNER: I have one or two other matters. I notice in your admissions in your Answer you admit the allegation in Paragraph 1, the matter of inducement, which is not numbered. You admit that?

MR. HIGHSAW: I admit that allegation.

MR. WARNER: I want to make sure that the affidavits are in evidence. I think the stipulation covers the affidavits and I offered the stipulation. So, to make sure, I am offering the affidavits that are covered by the stipulation and the exhibits attached.

THE COURT: Without objection they will be admitted.

MR. HEISS: I think that has to do with the affidavits of Messrs. Horning, McGraw and Shea, is that correct?

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MR. WARNER: That is correct.

The affidavits specified in the foregoing stipulation are as follows, to-wit:

[1]

AFFIDAVIT OF LAWRENCE W. HORNING

STATE OF OHIO
COUNTY OF CUYAHOGA SS

LAWRENCE W. HORNING, being first duly sworn, deposes and says that:

1. He is Vice President, Personnel, of the New York Central System; has held that office since June 1,

1943; and has his offices in New York City, New York.

2. On July 7, 1955, he received the following telegram from E. C. Thompson, Secretary of the National Mediation Board:

> "Following telegram received from President Kennedy of Brotherhood of Railroad Trainmen: 'Serious situation existing New York Central Railroad Lines West at Toledo, Ohio, as the result of management arbitrarily closing North Toledo Yard without negotiations. Request your Board take immediate jurisdiction over this matter and notify the carrier to hold the matter status quo pending mediation proceedings. Letter follows.' Please wire your statement."

3. On July 8, 1955, he received the following telegram from E. C. Thompson, Secretary, National Mediation Board:

> "We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to

[2]

> allocation of service between the two committees at Toledo, Ohio. Organizations further claim that carrier has not complied with provisions of section 6 Railway Labor Act in failing to serve formal notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without passing on propriety of formal docketing of such applications, we have assigned correspondence File C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative.

Please acknowledge and advise if this request will be complied with."

4. On July 8, 1955, he notified the National Mediation Board by telegram that the New York Central Railroad Company would defer the closing of its North Toledo Yard until the matter could be discussed by a Board representative with representatives of the Railroad and of interested employee organizations and The New York Central Railroad Company thereupon did defer the closing of its abovementioned yard.

5. On the 25th, 26th, 27th and 28th days of July, 1955 and on the 1st and 2nd days of August, 1955, in Toledo, Ohio, George S. MacSwan, representing the National Mediation Board, held a series of separate meetings with representatives of the Railroad and with representatives of the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen in an effort to settle or adjust the claimed dispute.

[3]

6. On August 2, 1955, affiant received from E. C. Thompson, Secretary of the National Mediation Board, the following telegram, which was directed also to Guy L. Brown of the Brotherhood of Locomotive Engineers, H. E. Gilbert of the Brotherhood of Locomotive Firemen and Enginemen, and W. P. Kennedy of the Brotherhood of Railroad Trainmen:

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has considered position of organizations that carrier has not complied with provisions of Section 6, Railway Labor Act, by failing to serve formal notice of intention to close North Toledo Yard. Also present status as reported by mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in memorandum agree-

ments of August 3, 1932 and May 1, 1948, covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board."

7. On August 4, 1955, affiant received the following telegram from E. C. Thompson, Secretary of the National Mediation Board:

"We are advised by the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of

[4]

Railroad Trainmen that those organizations have set strike date for six AM Eastern Standard Time Sunday August 7, 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Brotherhood of Locomotive Firemen and Enginemen also set strike date for same time on Michigan Central. Board hereby proffers its mediation services under provisions of Section Five, First Paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

On the same date, affiant notified the National Mediation Board by telegram as follows:

"We will co-operate with mediation efforts of Board this case."

The New York Central Railroad Company thereupon did again defer the closing of its North Toledo Yard.

8. On December 16, 1955, affiant received from E. C. Thompson, Secretary of the National Mediation Board, a letter as follows; which letter was also directed to Guy L. Brown of the Brotherhood of Locomotive Engineers, H. E. Gilbert of the Brotherhood of Locomotive Firemen and Enginemen and W. P. Kennedy of the Brotherhood of Railroad Trainmen:

"Reference is made to our Case No. A4923 which covers a dispute between the New York Central

Railroad, Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier.

[5]

"Mediation services of the Board were proffered in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a.m., EST, Sunday, August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

9. No agreement exists between The New York Central Railroad Company and any of the abovementioned Brotherhoods which would require that The New York Central Railroad Company continue in operation any of its yards or which would prohibit it from closing any of same. There is likewise no agreement between The New York Central Railroad Company and any of the abovementioned Brotherhoods which would prohibit the former from redesignating an interchange point or from abolishing jobs as a result of such closing or redesignation.

10. The attached "Western Union" telegrams are the original telegrams received by affiant in connection with the foregoing matters and the attached "Copies" are true and correct file copies of messages sent by affiant in connection with the foregoing matters.

Further affiant saith not.

Lawrence W. Horning

Sworn to before me and subscribed in my presence

this 10th day of January, 1956.

L. N. Shaner
Notary Public
My Commission expires June 6, 1958.

[1]

AFFIDAVIT OF ROBERT H. McGRAW

STATE OF OHIO
COUNTY OF CUYAHOGA SS

ROBERT H. McGraw, being first duly sworn, deposes and says that:

1. He is General Manager, New York Central System, Western District; has held that position since April, 1953; and has his office in Cleveland, Ohio.

2. On the 29th and 30th days of November, 1955 and on the 1st, 2nd, 5th and 6th days of December, 1955, Francis J. O'Neill, Jr., a member of the National Mediation Board, held separate meetings in Cleveland, Ohio, with representatives of The New York Central Railroad Company and with representatives of the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, bargaining agents for employees of The New York Central Railroad Company.

3. A strike by members of the abovementioned Brotherhoods would have the following results (statistical information having been obtained from records maintained in the usual and ordinary course of business under affiant's supervision):

(a) it would paralyze all operations of The New York Central Railroad Company between Toledo, Ohio and other points in its Western District, which includes the principal lines of The New York Central Railroad Company between Buffalo, New York and Chicago, Illinois and between Toledo, Ohio and Charleston, West Virginia, and would require the laying off of approximately 16,361 employees within the Western District outside the Toledo terminal area, with an approximate total daily wage loss to these 16,361 employees of $231,575;

[2]

(b) passenger operations of the Erie Railroad Company, The Baltimore and Ohio Railroad Company and The New York, Chicago and St. Louis Railroad Company, which use the Cleveland Union Terminal, Cleveland, Ohio, would be seriously disrupted;

(c) passenger operations of The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company and the Wabash Railroad Company, which use the Central Union Terminal at Toledo, Ohio, would also be seriously disrupted;

(d) passenger operations of the Grand Trunk Railway System (which uses the passenger station at South Bend, Indiana), of The Pennsylvania Railroad Company (which uses the passenger station at Erie, Pennsylvania) and of The New York, Chicago and St. Louis Railroad Company (which uses the LaSalle Street Station and trackage at Chicago, Illinois) would likewise be seriously disrupted and passenger and freight operations of other railroads having trackage rights over certain portions of the Western District, together with the operations of connecting carriers, would be seriously affected;

(e) it would require the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with total daily wage losses to these employees reaching approximately $15,305;

(f) it would prevent service to approximately 2,180 industries situated in the Western District of which many are engaged in the production of defense materials while others are engaged in the production of goods essential to our national economy;

[3]

(g) it would, in addition, prevent service to approximately 110 industries which do not

have sidetracks but use team track facilities at various points within the Western District;

(h) it would prevent the Eastern District, which includes the principal lines of the New York Central System between Buffalo, New York and New York City, New York and between Buffalo, New York, and Boston, Massachusetts, from receiving or delivering cars from or to lines in the Western and Northern Districts, thereby disrupting service in the Eastern District and requiring the laying off of numerous employees in addition to those mentioned above.

Further affiant saith not.

Robert H. McGraw

Sworn to before me and subscribed in my presence this 10th day of January, 1956.

L. N. Shaner
Notary Public
My Commission expires June 6, 1958.

[1]

AFFIDAVIT OF ROBERT H. McGRAW

STATE OF OHIO
COUNTY OF CUYAHOGA SS

ROBERT H. McGRAW, being first duly sworn, deposes and says that:

1. He is General Manager, New York Central System Western District; has held that position since April, 1953; and has his office in Cleveland, Ohio.

2. Affiant says that he has heretofore verified the complaint filed herein and an affidavit attached thereto.

3. Affiant further says that the injury, loss and damage from the threatened acts of Defendants herein unless restrained by the Court as set forth in said complaint and in said affidavits will be immediate and irreparable and will occur before notice of application for preliminary injunction can be served and hearing had thereon, unless so restrained by order of the Court.

Further affiant saith not.

Robert H. McGraw

Sworn to before me and subscribed in my presence this 20th day of January, 1956.

L. N. Shaner
Notary Public
My Commission expires June 6, 1958.

[1]

AFFIDAVIT OF WILLIAM A. SHEA

STATE OF OHIO
COUNTY OF LUCAS SS

WILLIAM A. SHEA, being first duly sworn, deposes and says that:

1. He is Superintendent of the Toledo Division of The New York Central Railroad Company; has occupied that position since April, 1953; and has his office in Toledo, Ohio.

2. The New York Central Railroad Company operates and for many years has operated several railroad yards in or near Toledo, Ohio, of which one is commonly known as the Stanley Yard (located in Wood County, Ohio) and another is commonly known as the North Toledo Yard. At its North Toledo Yard, The New York Central Railroad Company receives interchange of freight cars from The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, The New York, Chicago and St. Louis Railway Company, and the Toledo Terminal Railroad Company. A chart generally depicting the locations of the yards in question and also of the tracks of the several abovementioned railroad companies in or near Toledo, Ohio, is hereto attached.

3. On June 7, 1955, The New York Central Railroad Company, in writing, notified its employees that it would cease operations at, and close, the North Toledo Yard on July 10, 1955 and at a meeting held June 11, 1955 advised them that, beginning on July 10, 1955, freight cars from the abovementioned railroad companies would be received in interchange at the Stanley Yard.

4. On August 2, 1955, The New York Central

Railroad Company, in writing, notified its employees as follows:

"Effective at 11:00 P.M., August 7, 1955, North Toledo Yard will be closed."

[2]

5. On January 17, 1956, The New York Central Railroad Company, in writing, notified its employees that the North Toledo Yard would be closed at 11:00 P.M., E.S.T., on January 21, 1956.

6. The Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen have called a strike effective 11 o'clock, P.M., E.S.T., Saturday, January 21, 1956.

7. Operation of The New York Central Railroad Company will be impossible without the continued services of the employees represented by the abovementioned Brotherhoods.

8. Based on information contained in files and records which are maintained in the usual and ordinary course of business under his supervision, deponent further says that if operations of The New York Central Railroad Company are halted: It will be forced to lay off approximately 2,516 employees in the Toledo terminal area, which would result in a total daily wage loss of over $34,800 to such employees; it will lose thousands of dollars in damages daily; it will be forced to embargo shipments into and out of the Toledo terminal area and thereby deprive 207 industries in or near Toledo of rail service by The New York Central Railroad Company; the interchange of cars between it and the abovementioned several railroad companies, which serve 228 industries in or near Toledo, would be cut off; and the transportation of mail, consisting of approximately 15,582 sacks per day, into and from Toledo through The New York Central Railroad Company's Central Union Terminal, would cease.

Further affiant saith not.

William A. Shea

Sworn to before me and subscribed in my presence this 20th day of January, 1956.

M. E. Beyer
Notary Public
My Commission expires Oct. 7, 1957.

MR. HIGHSAW: Your Honor, in connection with my stipulation admitting the allegations of the preamble, so to speak, in the Complaint in Paragraph 1 I have asked counsel for the New York Central if they would admit that the Michigan Central Railroad is a leased line railroad operated by the New York Central, and I would also ask them if they would admit that the Toledo and Ohio Central Railroad was also a leased line railroad operated by the New York Central. They informed me my request is correct with respect to the Michigan Central Railroad, but that although Ohio Central was a leased line railroad from January 2, 1930 on, that on February 13, 1952, — — or it was a leased line railroad prior to February 13, 1952, and on that date by agreement was merged into the New York Central Railroad, and I request that counsel for the Plaintiff agree to that. I would also like to have the effective date of the lease of Michigan Central with New York Central.

MR. WILKINSON: That is January 2, 1930, and since that date New York Central has operated the railroad and property of the Michigan Central.

THE COURT: So it is agreed, then, that the Michigan Central is under lease to the New York Central; that is, it has been since 1930 and still is; that the Toledo and Ohio Central Railroad was merged into the New York Central System in 1952, is that correct?

* * *

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MR. WILKINSON: That is correct.

MR. WARNER: The Plaintiff rests.

MR. HIGHSAW: I didn't want to interrupt you while you were looking at that. Would you mind stating

for the record, if you know, in connection with the preamble of the Complaint in what other states the New York Central is incorporated other than the State of Ohio?

MR. WILKINSON: Yes. I can give you that. Your Honor, I would like to state that the New York Central consolidation agreement, which is dated April 20, 1914, is on file with the Secretaries of State of New York, the Commonwealth of Pennsylvania, the State of Ohio, the State of Indiana, and the State of Michigan, and it is so organized, and existing as a consolidated railroad corporation in those six states.

MR. HEISS: It is a corporation in all those six states?

MR. WILKINSON: Yes.

MR. HIGHSAW: We have some brief testimony to put on, if the Court please.

• • •

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DEFENSE EVIDENCE

Thereupon, the Defendants called as a witness,

M. W. HAMPTON, who, having been previously duly sworn, testified as follows:

EXAMINATION BY MR. HIGHSAW:

Q Mr. Hampton, will you state to the Court your full name?

A Milfred W. Hampton.

Q Would you also state your present address?

MR. WARNER: Would you mind raising your voice a little bit?

Q State to the Court what your present address is?

A My home address?

Q Yes.

A R.F.D. No. 5, Ashtabula, Ohio.

Q What is your present position, Mr. Hampton?

A Vice President of the Brotherhood of Locomotive Firemen and Enginemen.

Q What are your general duties in connection with

that position?

A To perform any duties that may be assigned to me by our International president, such as sitting on our general grievance committees, meeting with local lodges, organizing local lodges, and various and sundry other things.

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Q How long have you occupied that position?

A Since September 1, 1953.

Q. Is that a full time position, Mr. Hampton, or do you also work partly as a railroad employee?

A It is a full time position.

Q Now, prior to that time did you work as a railroad employee?

A Yes.

Q With what railroad?

A New York Central lines west.

Q In what capacity did you work for the New York Central lines west?

A As a locomotive fireman and as a locomotive engineer.

Q For how many years did you so work?

A It is hard to pinpoint it to the number of years, because I was furloughed during the depression and there was a time when I was serving in other capacities in the Brotherhood, but I hired out as a fireman on June 20, 1929, and at such time as I was able to work I worked for the railroad in those two classes I mentioned.

Q Mr. Hampton, you spoke of your general duties. You said your duties included assignments from the International president?

A Yes.

Q Were you assigned to the controversy between the New York Central Railroad and the Brotherhood of Locomotive Firemen and Enginemen over the closing of the North Toledo Yards?

A I was.

Q In connection with that controversy and in carry-

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ing out your general duties, Mr. Hampton, did you keep a file of all the correspondence that the Brotherhood handled with respect to that?

A I did.

Q I would like to hand you, Mr. Hampton, a document which purports to be a letter from the Grand Chief Engineer of the Brotherhood of Locomotive Firemen and Enginemen to the General Secretary of the National Mediation Board, dated July 8th, 1955, and ask you to look at it and see whether or not you can tell the Court whether that is a true and correct copy of such letter as it appears in your files?

A As near as I can tell, yes, that is a true and correct copy.

Q I would like to have that marked for identification as Defendants' Exhibit A. Mr. Hampton, I have here a copy of a document which purports to be a letter from Mr. Brown and Mr. Gilbert to the Secretary of the National Mediation Board, dated July 8, 1955, and will ask you to examine that and tell the Court whether that is a true and correct copy of the letter from your files?

A Yes, it is.

MR. HIGHSAW: Your Honor, I would like to have this letter marked Defendants' Exhibit B.

Q (By Mr. Highsaw) Mr. Hampton, I show you a letter dated July 8, 1955, from Mr. Brown and Mr. Gilbert to the Secretary of the National Mediation Board covering mediation services. I would like to ask you to look that over and tell us whether it is a true and correct copy of the letter from your files?

* * *

[72]

A It is.

MR. HIGHSAW: I would like to have that letter marked as Defendants' Exhibit C. Your Honor, at this point I would like to offer into evidence the documents that

have been marked for identification as Defendants' Exhibits A, B and C.

THE COURT: Without objection they will be admitted.

• • •

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Q (By Mr. Highsaw) Mr. Hampton, I have here a document which I will ask to be identified as Defendants' Exhibit D, which purports to be an application for mediation services, signed by Mr. Gilbert and Mr. Brown, dated July 8, 1955, on the official form that the National Mediation Board provides for that purpose. I would like to ask you to take a look at this and ask you if you can state as to whether this is a true and correct copy of the application form from your files?

A It is.

• • •

[75]

Q Mr. Hampton, I have a document identified as Defendants' Exhibit F which purports to be a copy of a telegram signed by Mr. Gilbert and Mr. W. P. Kennedy, addressed to Mr. Thompson, Secretary of the National Mediation Board, dated August 4, 1955, and I would like to ask you to take a look at this and see if you can identify it as a true and a correct copy of a telegram taken from your files?

A Yes, it is.

Q Would you identify it for the Court? I believe it is clear, but I would like to have you identify Mr. Gilbert?

A He is International president of the Brotherhood of Locomotive Firemen and Enginemen.

Q And who is Mr. W. P. Kennedy?

A He is president of the Brotherhood of Railroad Trainmen.

Q Mr. Hampton, I have a document here which I would like identified as Defendants' Exhibit G, which purports to be a telegram signed by Mr. Gilbert and Mr. Ken-

nedy, addressed to Mr. Thompson, Secretary of the National Mediation Board, dated August 4, 1955. I would like to ask you to examine it and tell us as to whether or not it is a true and correct copy of a telegram from your files?

A It is.

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Q Mr. Hampton, I have here a document which I will ask to be identified as Defendants' Exhibit H, which purports to be a copy of a telegram from Mr. Kennedy and Mr. Gilbert to Mr. Thompson, Secretary of the National Mediation Board, dated January 19, 1956. I will ask you to examine it and tell us whether or not it is a true and correct copy of a document from your files?

A It is.

* * *

Q Mr. Hampton, I have here a document purporting to be a Memorandum Agreement, dated at Detroit, Michigan, August 3, 1932, signed by representatives of the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railway Conductors, the Brotherhood of Railroad Trainmen, and the New York Central and Michigan Central Railroads, which I will ask to be identified as Defendants' Exhibit J. I will ask you to examine this document and tell us whether or not it is a true and correct copy of the document from your files of such agreement?

[77]

A It is.

MR. HIGHSAW: Your Honor, I ask that there be admitted into evidence Defendants' Exhibits D, E, F, G, H, I and J.

THE COURT: Are you excluding Exhibits A, B and C?

MR. HIGHSAW: I believe they have already been offered, Your Honor, and I intended to offer Exhibits D through J, inclusive.

THE COURT: Without objection they will be admitted.

MR. WILKINSON: We have no objection to Defendants Exhibits D, E, F, G and H, which are communications, insofar as they are material and relevant to the sole issue before this Court, namely, the closing of the North Toledo Yard. As to Exhibit I, there is no question before the Court requiring him to interpret any contract, and so we object to the admission into evidence of Exhibit I, or Defendants' Exhibit J.

MR. HIGHSAW: Your Honor, the Plaintiff clearly put in issue in this case the purpose of the strike by their allegations in Paragraph 20 of the Complaint, that the strike is for a definite purpose, and by their further allegations that such a strike does not constitute a valid labor dispute under the Railway Labor Act or under the Norris-LaGuardia Act. We think that Exhibit I, which I am now

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offering, is the exhibit which is referred to in the invocation of mediation services as well as the prior exhibits which have been admitted into this case, and we think it is clearly relevant to the issue of what the strike is about.

MR. WILKINSON: It would call for a legal conclusion, based upon the formal ruling of the National Mediation Board, as stated in a telegram quoted in Paragraph 10 of the Complaint; and it is our further position, Your Honor, that that is a ruling which has not been directly attacked, is not subject to collateral attack in this proceeding, and the Court has no jurisdiction under the Railway Labor Act to review that decision of the Board.

MR. HIGHSAW: We are not asking the Court to review that decision or the validity of this contract, and we are not even asking you to pass upon whether the claims of the Railroad Brotherhoods under this contract are valid. The sole issue is this: what was the nature of the dispute between the railroads and the Brotherhoods, and what was the nature and purpose of the strike?

Of course, we have denied the allegations contained in Paragraph 20 of the Complaint, that the threatened strike was for the sole purpose of preventing the Plaintiff from closing the North Toledo Yard. We think it is clear that this agreement, with respect to which a claim is made, that the closing violated this agreement and is clearly relevant

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on the question in controversy that existed between the parties as to the purpose of the strike.

MR. WARNER: We are not asking the Court to pass on that agreement.

MR. HIGHSAW: The validity of it?

MR. WARNER: Not the validity, the application or interpretation of it. We don't ask the Court to do that.

MR. HIGHSAW: The only issue is, what was in dispute between the parties, and that is the sole issue before the Court. We are not asking the Court to interpret the agreement or to pass upon its validity, to interpret it, or to say that the Brotherhood was right, that the closing of the yard would violate this agreement. We are only asking that the Court find that the claim of the Brotherhood, — — namely, that the closing of the yard would violate the provisions of this agreement, — — was one of the disputes between the parties, and therefore we believe it is relevant.

THE COURT: Before the Mediation Board?

MR. HIGHSAW: Prior to that time, before the Mediation Board, yes.

THE COURT: I have no objection to admitting it for that purpose. There has been much discussion of this

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agreement of 1932. Counsel have argued it in their pretrial briefs and I never had an opportunity to know what it was. I can't tell at this time what, if any, probative effect it might have in this case, but I have no objection to its being admitted for the information of the Court.

* * *

A (By Mr. Highsaw) Referring to this agreement of

August 3, 1932, a copy of which you have in your hand, Mr. Hampton, I would like to have you read to the Court part of that agreement. It is a long agreement and I would like to have you read one or two paragraphs of it. If the other parties want other paragraphs read, I have no objection to that, but I would like to have the witness read Paragraphs 1 and 2 of Item 1.

MR. WILKINSON: I object to it on the ground it is immaterial to the issue in this case.

THE COURT: Overruled. He may read it.

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A (Reading):

"IT IS AGREED as follows: effective August 16, 1932:

"Item 1—That New York Central and Michigan Central employees be permitted to maintain their identity as employees of their respective companies.

"That present and future New York Central and Michigan Central employees on seniority rosters now applying to road and yard service specifically dealt with in this agreement shall be permitted to earn seniority for road and yard service herein dealt with."

Q (By Mr. Highsaw) I would like to ask you to read to His Honor Item 2 (c) on the next page.

A (Reading):

"(c) That all Michigan Central work performed by Michigan Central enginemen with Toledo Terminal be continued to be covered by such employees.

"That in the application of the previous paragraph it shall be the endeavor, so far as practical, of the New York Central officials to confine Michigan Central enginemen to former Michigan Central territory and the New York Central enginemen to former New York Central territory, but where the service becomes intermingled, it will be divided between employees of the two railroads involved on an equitable basis to be worked out.

"That vacancies due to enginemen laying off, and

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extra service, will be filled by New York Central en-

ginemen, provided there are no Michigan Central enginemen available at Toledo.

"That at the end of each six-month period the Michigan Central enginemen vacancies filled by New York Central enginemen at Toledo will be checked against the New York Central enginemen vacancies at Detroit filled by Michigan Central enginemen, and enginemen of the railroad short their proper proportion of the work as developed by this check will be permitted to fill regular positions of enginemen of the other road in such yard until they have worked out the balance due them.

"The first engineman of either railroad deadheading to work out such shortage and the last engineman of either railroad deadheading after working out such shortage will be compensated for the deadheading. All other deadheading to fill regular jobs at either Toledo or Detroit will be without expense to the carriers."

Q (By Mr. Highsaw) That Item 2 (c) which you have just read, Mr. Hampton, refers to work within the Toledo Terminal. Do you know whether or not the North Toledo Yards are within the Toledo Terminal?

A They are.

Q Do you know whether or not at the time this agreement was entered into the North Toledo Yards were the

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Michigan Central Yards and that the work done therein was performed by Michigan Central employees?

A Yes, prior to this agreement.

MR. WILKINSON: I object. The New York Central operates the Michigan Central. There is no separate operation.

THE COURT: The question was whether he knew at the time the agreement was entered into that the Michigan Central employees operated in the North Toledo Yards.

MR. WILKINSON: I misunderstood.

Q (By Mr. Highsaw) Mr. Hampton, Item 2 (c) refer to the filling of vacancies due to enginemen laying off

and extra service. Could you explain to the Court what, in railroad parlance, extra service means?

A In this particular case as far as firemen are concerned on the North Toledo Yard jobs, the Michigan Central firemen were regularly assigned to that work each and every day. Should there be a desire to lay off it would create a vacancy, and under the terms of the 1932 agreement New York Central firemen would be sent to fill that vacancy.

MR. WILKINSON: I object to further questioning along this line, Your Honor, on grounds of its immateriality.

MR. HIGHSAW: Your Honor, this goes to the core of what this dispute is about. It is our position that in the

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taking over of the operations of the Michigan Central by the New York Central it was necessary to work out certain allocations of work among the enginemen and the yardmen, and that agreements were entered into for that purpose, and that this is one of those agreements, and it demonstrates what was done with respect to the work in the North Toledo Yards in working out that matter and what gives rise to the present controversy between the parties in closing the North Toledo Yards.

THE COURT: That is not a bone of contention on your part in this particular hearing, is it?

MR. HIGHSAW: I am not clear on that, Your Honor.

THE COURT: The point you are seeking to make here is that regardless of any effect of the closing upon the employees, disregarding any effect that it might have, you are standing here on the issue that you have a right to participate in the determination of whether the yards are to be closed, is that correct?

MR. HIGHSAW: That was the point we were arguing this morning, Your Honor. All we are now introducing is evidence to show what the dispute itself was about, and

we are now introducing evidence for the purpose of showing to Your Honor that the dispute, — — actually, we took the position legally that even if the Plaintiff was right and our evidence failed to convince Your Honor, that the sole

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purpose of the strike was not as alleged in Paragraph 20 of the Complaint, that we still had to legal right to strike. But we claim the dispute was much broader than alleged in Paragraph 20 of the Complaint, and that is the purpose for this evidence. In other words, it goes to what the nature of the controversy between the parties was.

MR. WILKINSON: I still say that it is immaterial to the issues involved before this Court. The sole purpose of this line of questioning or introducing these documents in evidence is to have the Court review the determination of the Mediation Board and to interpret these agreements, and we say, — —

THE COURT: (Interposing) The Court will say that under the limitations made by counsel this morning in their arguments, that the Court would not undertake any such thing at all.

MR. HIGHSAW: I have indicated that I don't want the Court to do that, but I want to convince the Court as to the nature of the dispute. I am not asking that the Court say we are right, that this agreement was violated, or to make any ruling whatsoever with respect to the Mediation Board, because the Board was not ruling on this question we are talking about now, and I am simply introducing the evidence to show what the dispute was about.

I think it is clear from the documents that have already been put in that the Brotherhoods had raised the

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question of the violations of these agreements during the period in which the Mediation Board was mediating this matter and raised it on the invocation of services of the Mediation Board. I just can't understand counsel's objections.

THE COURT: The Court will admit it for the limited purpose of showing what the dispute was about before the Mediation Board.

• • •

Q (By Mr. Highsaw) I now ask you, Mr. Hampton, to read Item 2 (d) of this agreement to the Court.

A (Reading):

"(d) That all New York Central yard work performed by New York Central enginemen within the Detroit Terminal be continued to be covered by such employees.

"That in the application of this principle New York Central enginemen are entitled to 4.166 percent

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of the total yard engine work in Detroit Terminal, exclusive of engines in passenger yard and tunnel service, with a maximum of five engine crews, unless conditions in the former New York Central territory indicate they are entitled to additional engine crews.

"That vacancies due to New York Central enginemen laying off will be filled by Michigan Central enginemen, provided there are no New York enginemen available at Detroit.

"That this relief service will be equalized as provided in the third paragraph of Item 2 (c), and deadheading as per fourth paragraph of Item 2 (c)."

Q In the operation of this agreement who performed the yard service at Detroit, the employees of which seniority list or which carrier?

A The New York Central employees covered the regular yard assignments as provided in Item 2 (d) and the Michigan Central continued to perform their service under the terms of 2 (d).

Q What was the situation in the North Toledo Yards in that respect?

A The Michigan Central engine crews performed the regular yard service in the North Toledo Yard.

Q And what about the extra service?

A That was performed by New York Central employees.

Q I am not sure if you answered the question as to what extra service meant. We had an objection at that

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point and I don't believe you got to give it. So that the record will be clear, will you give us that, please?

A Extra service primarily consists of the vacancy either of a fireman laying off or taking a vacation or some other emergency where there is no regular fireman available to fill the work. When we find that situation we call it a vacancy, and it then goes to the extra service list, or, as we call it, the extra firemen's list.

MR. HIGHSAW: In connection with this agreement, I believe as a result of our last discussion Your Honor does understand our position, but so that there will be no question about it I do want to make clear that we are introducing this evidence now to show that the dispute is of a much broader nature. In other words, in the legal argument this morning we were arguing for the dismissal of the Complaint, assuming the truth of the allegations in the Complaint, as to the nature of the dispute. We are now engaged in putting on evidence. We denied those allegations made in the Complaint and we are now putting on evidence designed to show Your Honor that the nature of the dispute is much broader; and consequently, even though the Court should decide the nature of it is not valid, as alleged by the Plaintiff, we say it is, and we hope that our evidence will prove to you that it is a valid dispute.

MR. WARNER: As we stated this morning, we are before this Court only as to the phase of the closing of the

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yard. We are not asking the Court to foreclose the Defendants from any rights they might have under the Railway Labor Act as it affects working conditions. That is why we have been objecting to its materiality, and Mr. Highsaw is attempting to inject that here. He is endeavoring

to introduce something that has some tendency to becloud the issue. I think the Court is quite clear on the issue, but we feel that the record should not be cluttered up with matters that might confuse and becloud that basic issue.

THE COURT: I believe the Court has heretofore stated the basis on which he would admit this document, and that is for the sole purpose of enlightening the Court on an agreement that has been discussed by counsel in their trial briefs and of which the Court had no knowledge whatever.

MR. WARNER: For that sole purpose, yes.

* * *

[99]

MR. HIGHSAW: I have now a document which I would like to have marked for identification as Defendants' Exhibit K.

This document which has been marked for identification as Defendants' Exhibit K purports to be a Memorandum Understanding. It is specifically entitled, "Memorandum of Understanding in connection with the application for Memorandum Agreement dated August 3, 1932, between the Carriers and Grand Lodge Officers to eliminate the necessity for deadheading and maintaining periodic checks." This agreement is signed by representatives of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, by representatives of the Michigan Central and New York Central Railroads as well.

Q (By Mr. Highsaw) I would like to submit this document to you, Mr. Hampton, and ask you to examine it and to state whether or not you can identify this document as a true and correct copy of the signed agreement from the Brotherhoods' file?

A It is.

MR. HIGHSAW: I now offer in evidence Defendants' Exhibit K.

MR. WILKINSON: I object on the same grounds I stated earlier in our objections to Exhibit J.

THE COURT: I don't know what the purpose of this is except to indicate that the trainmen of each of the branches agreed to and did abide by the terms of the agreement of

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August 3, 1932; am I correct about that?

MR. HIGHSAW: No, Your Honor. This is an amendment to the agreement of August 3, 1932, and would not complete the picture if I introduced only that agreement. This is a subsequent amendment which made changes in the original agreement, which I am now going to ask Mr. Hampton after this is admitted in evidence to point out. I offer it for the same purpose.

THE COURT: It will be admitted.

Q (By Mr. Highsaw) Mr. Hampton, I would like you to refer to Paragraph 3. First, I would like you to refer to the heading of this agreement, which says that it is a "Memorandum of Understanding . . . . to eliminate the necessity for deadheading and maintaining periodic checks."

Do you know, Mr. Hampton, what "the necessity for deadheading and maintaining periodic checks" herein involved was?

A It was as a result of certain understandings between the Brotherhoods and the Carriers in connection with keeping a work check, which involved the work of New York Central enginemen working on Michigan Central property and Michigan Central enginemen working on New York Central property in order that an accurate check could be kept by the Carriers, and it stipulates that it would be furnished to the respective committees to keep track of the extra work performed by New York Central

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employees on certain Michigan Central work and Michigan Central employees on New York Central work, and at the expiration of specified times that work would then be equalized and such accrued equities would then be distributed to the employees on the respective seniority districts

that had an excess, or that had a deficiency rather.

Q Where were the New York Central enginemen working?

A The New York Central enginemen were working on the extra jobs and extra assignments in the North Toledo Yard.

MR. WILKINSON: I would like to object to this on grounds of immateriality. This appears to me only to have a bearing on the interpretation of the contract.

* * *

[93]

THE COURT: The Court has repeatedly stated the limitations under which this inquiry may proceed. You may go ahead under those conditions.

Q (By Mr. Highsaw) Mr. Hampton, I will ask you to recall your last statement. In the last statement you were making you spoke of extra work being performed by New York Central men in the North Toledo Yards. That was not pursuant to the 1932 agreement, was it?

A No. There was no extra work performed by New York Central employees in the North Toledo Yards prior to the 1932 agreement.

Q The extra work performed by the Michigan Central people under the 1932 agreement, already introduced in evidence, was performed in the North Toledo Yards, was it not?

A That is correct.

Q As well as the regular work?

A That is correct.

Q And the regular work performed by the New York Central enginemen and the extra work under that agreement was performed in the Detroit Yard, was it not?

A That is correct.

Q And the necessity for deadheading and maintaining periodic checks was occasioned by that situation, was it not?

A As a result of the 1932 agreement, yes.

Q That meant, did it not, that the New York Central enginemen had to travel to Detroit in order to perform extra work because of vacancies, and assignments and that sort of work?

A That is correct. That is what is referred to as "deadheading."

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Q And Michigan Central men had to travel to Toledo?

A That is correct.

Q Do you know whether or not the New York-Central served upon the Brotherhood of Locomotive Firemen and Enginemen a proposal to change that 1932 agreement because of the difficulties caused by that deadheading?

THE COURT: Couldn't it be stipulated that this Memorandum of Understanding was effective as of May 1, 1948? I think your pleadings show that.

MR. HIGHSAW: This goes beyond, Your Honor, I want to show by this that in 1948 the railroads actually submitted a notice to change this and it was discussed under the Railway Labor Act. That is my purpose, Your Honor, and that is the thrust of the question.

A Sometime during 1948, — — I can't tell you the exact date, — — but the New York Central and the Michigan Central management served a formal notice on the respective committees to amend or change the 1932 agreement in certain respects, and they outlined the changes they desired and the reasons for their requested changes.

Q Did that notice result in any change in the 1932 agreement?

A Ultimately an agreement was reached between the engineers and firemen's organizations on the Michigan Central and New York Central railroads, which we now know as the 1948 agreement.

Q Was there an intervening notice served about 1948, Mr. Hampton, which resulted in that agreement?

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A I do not recall of any intervening agreement. After the formal notice was served, there were various conferences held, but I do not know or do not recall of any intervening notices.

Q Now, this agreement which has been marked for identification and admitted as Defendants' Exhibit K is the agreement which resulted from that notice that you refer to?

A That is correct.

Q Would you tell the Court what the effects of Paragraphs 3 and 4 are with respect to deadheading and the changes in work assignments in the Detroit Yard and the North Toledo Yard?

A Paragraph 4 covers the North Toledo Yards, in which it states that Michigan Central engineers and firemen will man all regular yard assignments including the industrial yard jobs, and that the vacancies therein will be filled by New York Central employees. At one time last summer I remember being advised by our local lodge officers that there were six yard assignments at that time working in the North Toledo Yard. Three of those were regular assignments under Paragraph 4, which would be covered by New York Central engineers and firemen, and the three remaining were called "Extra yard assignments" under the terms of the latter part of Paragraph 4, and those were covered by New York Central engineers and firemen as well as the vacancies that might exist at various times on the regular yard jobs.

Paragraph No. 3 deals with the Detroit Terminal wherein the New York Central engineers and firemen covered certain regular jobs and Michigan Central men cov-

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ered all extra work over and above the regular assignments. That eliminated the deadheading of New York Central men to cover extra assignments because of vacancies, and it eliminated New York Central employees at the Detroit Ter-

minal from deadheading to Toledo to cover extra yard assignments and vacancies.

Q Is it correct to say that as a result of this amendment the New York Central enginemen gave up their rights to work in the Detroit Yard and received the right to work in the North Toledo Yards, and that the Michigan Central men gave up their rights, — — with respect to the extra work I am speaking of, — — in the Detroit Yard and received rights to work in the North Toledo Yard?

A That is correct.

Q When a railroad employee has a right to work in a particular yard such as the North Toledo Yard, Mr. Hampton, how does he exercise that right?

A Under seniority rights, under the contract for that district.

Q Is that a contract between the organization and the railroad?

A Yes, on each individual railroad.

Q On each individual railroad?

A That is correct.

Q Is there a contract covering seniority, — —, that is, before the North Toledo Yard was closed was there a contract covering seniority in that yard?

A By New York Central?

Q Well, if there was such a contract, Mr. Hampton, with what road was it?

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A Michigan Central held the contract under the applicable seniority rules, stating that they had the rights to cover the regular yard work at North Toledo, and by the New York Central Lines West seniority rules, it gave those employees the right to cover the extra work at the North Toledo Yard.

Q Are there any other yards in the Toledo area, New York Central freight yards?

A Yes, sir.

Q Could you name those for the Judge?

A We have two of the larger yards, which we call Airline Junction and the Detroit Yards.

Q Who had the seniority rights for yard switchman at the Airline Junction Yard?

A New York Central Lines West employees.

Q That is in West Toledo?

A That is correct.

Q Now, who has the seniority rights in the Stanley Yard?

A The T. & O. C. is covered by a separate contract.

Q Is that true with respect to enginemen as well?

A Yes, I am speaking of enginemen.

Q I believe you stated, Mr. Hampton, that there was in existence between New York Central Lines West and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen an agreement which covered seniority, among other things, is that correct?

A That is correct.

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Q I have in my hand a copy of a document identified as Defendant's Exhibit L, which is entitled "The New York Central Railroad Company (Line West of Buffalo) including Cleveland Union Terminals Company, except Kankakee and Danville Subdivisions and Ohio Central Division." I will ask you to examine this agreement, this copy of this agreement that I have here, and tell us whether or not it is a true and correct copy of what it purports to be?

A It is.

Q Would you explain to the Court the exception with respect to the Ohio Central Division, Mr. Hampton, which is contained in small type there?

A The exception as to the Ohio Central Division indicates there is a separate contract covering the employees in the T. & O. C., and this is not to be misconstrued as covering those employees because of the financial struc-

ture of the New York Central System.

Q I believe you testified, did you not, that the T. & O. C. employees have a contract giving them seniority for yard work in the Stanley Yards?

A That is correct.

Q I don't want you to read them all, but would you state to His Honor what the sections are in this contract which deal with seniority?

A "General Rules," which start on Page 88, and also General Rule 23 at the bottom of Page 96 are the General Rules applying to seniority.

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Q Is there a provision in this contract which deals with local agreements?

A Yes, there is.

Q Would you read that to His Honor?

A General Rule 25. That reads as follows:

"25—Local Agreements. Where local conditions are such that the provisions of this schedule evidently work a hardship on the firemen or the company at that point, the local committee working in conjunction with the General Chairman, will be permitted to agree with the officials on the rules to cover the conditions, such rules to be binding at that particular point."

MR. HIGHSAW: I now offer in evidence Defendants' Exhibit L.

THE COURT: What is the purpose of this?

MR. HIGHSAW: The purpose of this, Your Honor, is that Mr. Hampton has testified about the splitting up of these seniority districts among the Stanley Yards, the Airline Junction Yards and the North Toledo Yards, and there were separate seniority lists for each one. This agreement, as he has testified, contains seniority provisions and provisions relating to local agreements, local agreements by the local groups.

It is our position that one of the elements of the dispute involved here was that the work of the North Toledo

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Yard of the New York Central Lines West, that the enginemen and yardmen who had the extra work and the regular work in that yard when the North Toledo Yard was closed that was transferred to the Stanley Yards which, in accordance with Mr. Hampton's testimony, has a separate seniority district and a separate seniority list. So that those men are now unable to bid on that work, and consequently they have been injured, and that was one of the elements of the dispute.

I hope to go ahead and develop with other witnesses where they can bid. Again, Your Honor, I am not asking you to interpret this agreement or pass on its validity, but it is offered for the same limited purpose, simply for the information of Your Honor.

THE COURT: I don't see how this information can help the Court with the problem before it. If it is the desire of counsel for the Defendants to show the effects on existing seniority rights because of the closing of the North Toledo Yards, then the Court is not interested at this point in hearing that testimony at all, because counsel himself eliminated that question in his argument this morning.

If you are at all interested in determining the maladjustments that may occur in these various agreements because of a proposed closing of the yard, then that is a matter for the Adjustment Board. This Court is not sitting

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as an Adjustment Board.

MR. HIGHSAW: I agree with Your Honor, and we are not going to ask Your Honor to decide that there has been an infringement of seniority rights. The sole issue is whether or not under the Norris-LaGuardia Act this is a legal strike. That purpose was set forth this morning.

THE COURT: This morning it was to require management to sit down and negotiate with the Defendants before if made a change of policy.

MR. HIGHSAW: That was for the purposes of my legal argument this morning.

THE COURT: That's right.

MR. HIGHSAW: And we made an amendment to our Answer, and we stated that the Complaint failed to state a cause of action.

THE COURT: That's right.

MR. HIGHSAW: However, we are now at this phase of the case where we are presenting evidence on the merits of the Complaint, and we have denied the allegations in Paragraph 20, which sets forth that the threatened strike is called for the sole purpose of requiring the Plaintiff to continue the operation of said railroad yard and in refuting the contentions in that paragraph that it is the sole purpose. So that we are endeavoring to demonstrate to Your Honor that the strike arose out of a dispute between the

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Brotherhoods and the railroad was over much broader subject matter than that.

THE COURT: Then your position is not the position that you spent this morning arguing on.

MR. HIGHSAW: I have not changed that position. I want to make it clear. When you consider this case you should dismiss the Complaint, I believe, on the basis of my legal argument this morning. But like any situation in which you have an argument addressed solely to the question of whether the Complaint states a cause of action, you then have a subsequent case if that is denied on the merits. Ordinarily, an argument like we had this morning would have taken place maybe several weeks or days before this trial on the merits and at that point they wouldn't have been put together.

THE COURT: Then I misunderstood your position this morning. I thought we re-emphasized that position.

MR. HIGHSAW: I am sorry if I did not state it clearly for the Court. My position was as you stated it for the argument we had this morning. In other words, I

have two positions in this case. We didn't believe, when the Plaintiff pleaded Paragraph 20, that it was correct. We believe that the documents in this case show that the nature of our dispute was a much broader one than alleged in the Complaint. However, we also believed as a matter

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of law, even if we accepted the allegations in the Complaint, that nevertheless the Complaint could not stand and the strike was a valid one.

Now, this morning I was attempting to convince Your Honor that if the allegations of Paragraph 20 are accepted as correct by Your Honor, — — and I was accepting them as correct for that purpose, — — that there was a valid strike and that the Norris-LaGuardia Act prevented an injunction.

I still hold when Your Honor has had a chance to study the situation and to analyze the law and the cases we referred to that Your Honor will agree with the Brotherhoods on that position and you will rule in our favor on that and dismiss the Complaint.

However, we then proceeded onward to a trial on the merits of the Complaint, which by agreement we have brought before Your Honor today, and on the merits of the Complaint we have denied the allegations of the Complaint that the sole dispute was as narrow as the Plaintiff stated in Paragraph 20, and all of the evidence I have introduced through this witness is for that purpose, but not for the purpose of asking you to interpret one line in the contract or to pass on one single provision in the contract, Your Honor, but simply for you to determine on the basis of the evidence before you what the parties actually were arguing about. Whether or not the Brotherhoods were right

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or wrong as to the effect on seniority, is immaterial; it is a question of whether or not there was a bona fide dispute between the parties with respect to this matter, and this goes to that limited point.

THE COURT: This is all evidence you would expect and would want to present to the management of the railroad if you were permitted to sit down and negotiate on whether or not the yard should be closed, is that correct?

MR. HIGHSAW: That is correct.

THE COURT: I don't believe the Court should go into that.

MR. HIGHSAW: I don't ask Your Honor to go into it. I only ask that you take it for the limited purpose of going to Paragraph 20 of the Complaint, which states that the threatened strike was for the sole purpose of the closing of the yard. We claim, as I have stated, that it is much broader than that.

THE COURT: Even though you denied it this morning, you spent your entire argument admitting that that is the sole question.

MR. HIGHSAW: I was derelict if as a lawyer I was not able to make it clear to Your Honor.

I was arguing simply the legal position that, accepting that, — — which we have denied, — — but even accepting

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that as true, that still there was not a cause of action here. Your Honor, we firmly believe that is true, and as a legal matter we thought we had that principle established. We think it is true and correct law and I will not reargue it. I hope you will agree with us. But we have now proceeded to a trial on the merits of the Complaint and we are trying out that issue in Paragraph 20 of the Complaint. Like any good lawyer, although we believe we were true and correct on the legal arguments, we were not going to stand on them, particularly when we sincerely and genuinely believe that the allegations in Paragraph 20 were not true, and the evidence will clearly show they are not true.

MR. WILKINSON: With respect to the allegation of Paragraph 20 of the Complaint, it seems to me that has been proved by the conduct of the Brotherhoods. Whenever we posted a notice, they threatened to strike. We with-

drew it, the plan to close the yards, because of the strike threat. It happened three times. That in itself proves that argument. Furthermore, Your Honor, the Brotherhoods have never asked us for any change in these 1932 or 1948 agreements. We are willing to negotiate them.

THE COURT: That was my understanding this morning.

MR. HIGHSAW: I would like to answer that argu-

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ment. First, the question of whether or not Paragraph 20 is true or not, of course, is a question to be decided at the end of the case on all of the evidence, and counsel cannot suggest that that question has been determined here merely on the evidence he submitted. Furthermore, the fact that the strike was previously called off is also significant. It was called off at the request of the Mediation Board.

I would submit to Your Honor that the documents clearly show that when the Mediation Board proffered its services it was accepted by both parties. There are documents in there showing that the Brotherhoods then telegraphed the Mediation Board.

THE COURT: If counsel wants to present the question of the effect of the closing, the adverse effect of the closing, upon the existing relationships of the parties, then he has that opportunity now. The Court has invited him to take that opportunity to go before the Arbitration Board and thrash it out. For this Court to sit as a Board of Arbitration and try to determine the equities, I think is wrong under the state of the pleadings and in the light of the arguments that we spent the entire morning on.

MR. HIGHSAW: I can agree one hundred percent with Your Honor, but I am sorry I am unable to make myself clear.

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THE COURT: No. I can't grasp your position in the light of the position you took this morning.

MR. HIGHSAW: I am not asking you at this time to

pass on the effects of this closing of the yard. I am only asking you to take a look at the evidence we are submitting now and decide in the light of that evidence the dispute between the parties arose out of a controversy and the threatened strike was for the sole purpose of continuing the operation of the North Toledo Yard, as alleged in Paragraph 20 of the Complaint, or whether the dispute was of a much broader nature and it arose out of the effect that that closing had upon the employees, and I am asking you not to pass upon that fact, Your Honor, but only to decide that on the evidence that was what the parties were arguing about.

In so asking you, I am now presenting evidence on the merits of the case in accordance with the original understanding of counsel that when this matter came before Your Honor today we would be prepared to present evidence on the merits of the case. The argument which I made this morning was a legal argument.

THE COURT: The Court must now assume that your argument this morning did not mean what it said.

MR. HIGHSAW: I meant every word of what I said,

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Your Honor, and I would have preferred as a lawyer that at the closing of my argument or at the noon recess that Your Honor would have said that we were correct and dismiss the Complaint; but because I recognize it raises legal questions, Your Honor undoubtedly has to look into it, and I still hope when Your Honor looks into it he will say we are right; that even if the Plaintiff's allegation is correct in Paragraph 20, that this dispute is solely about the closing of the yard and the threatened strike is solely for the purpose of keeping it open, even under those circumstances we have a right to strike under the Norris-LaGuardia Act.

But if your Honor should disagree with me on that, I hope that he will examine the evidence which is now being put in and Your Honor will agree that the sole purpose of the strike as a matter of fact, as distinguished from the matter of law we were discussing this morning, was not for

the sole purpose of keeping the North Toledo Yard open, but that it involved a much broader issue of the effect of that closing upon these various agreements that we have been talking about and that consequently it is a valid labor dispute on which we had a legal right to strike.

THE COURT: The Court will say to counsel he will not go into the question of the effect that the closing of the yard might have upon existing contracts. That is a matter counsel is free to invoke before the Arbitration

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Board and the Court has invited him to do so. If you do that, these proceedings will be discontinued until you have invoked their assistance on the question of the effect of the closing.

MR. HIGHSAW: I am not asking Your Honor to decide what the effect is, but only what the purpose of the threatened strike was, what the nature of the dispute between the two parties was, and upon your decision on the evidence as to the nature of the dispute between the two parties and as to the purpose of the threatened strike, to rule that that nature was a proper matter for collective bargaining and that the strike for that purpose was legal and that the injunction should be denied, or, in the alternative, — —

THE COURT: (Interposing) In other words, you want to repeat the evidence before this Court that you have heretofore submitted to the Mediation Board, is that correct?

MR. HIGHSAW: There must be some misunderstanding. No evidence was presented to the Mediation Board. The Board does not decide those matters. All they do in a dispute is provide people who are supposed to be experienced in labor matters. They have mediators who are not Board members. They go out into the field and get everybody together, as they did here in Cleveland over a period of two weeks. They were in a hotel. They went

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from room to room talking about the strike, the nature of the dispute, trying to probe it to see if they could propose some peaceful solution. They make no decision. If at the end of the mediation effort they are successful, then the parties will sign an agreement and that is the end of the matter. If they are unsuccessful, then under Section 5 of the Railway Labor Act they will send letters to the parties saying, "We relinquish jurisdiction."

Under the Railway Labor Act the Mediation Board has no authority, — — and I think counsel will agree with me on this, — — to make a decision and never makes a decision, except in one field of operation, and that is when the question arises as to who is the properly selected collective bargaining agent on a particular railroad property. That is done in the role of a mediator under Section 5. It is just what that term implies, a mediator. It makes no decision of any kind or description. However, I have no doubt that during the mediation in this case these matters we are talking about were brought up before them. Mr. Hampton would so testify. I don't know what they told the railroad men. They kept that a secret. The Brotherhood people told the mediators what the dispute was about and what they were trying to accomplish in this situation. The mediators talked to the railroad people and they were unable to reach an agreement. Mr. O'Neill, a member of the Board, said he was unable to get them to reach an

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agreement and he relinquished jurisdiction. Then there was one further step for something to be accomplished there, and that was the appointment of a Presidential Emergency Board.

Now, as I said when we introduced the agreement, the first agreement of 1932, we are now engaged before Your Honor in trying to prove to Your Honor that the dispute here was of such a nature that it was a legitimate and valid labor dispute. It makes no difference whether the Broth-

erhood was right or wrong in their interpretation of these agreements, and that is why as a matter of law I could not ask Your Honor to go any further in this. Consequently, I am not asking Your Honor to pass upon any matter which might be submitted, if it could be submitted, to a National Adjustment Board with respect to any of those issues; that the nature of the dispute is that the Brotherhood contends certain things on one side and the railroad contends certain things on the other side, and that those two tensions create a dispute at the apex and that is a dispute which is a valid labor dispute, and that is the sole issue.

THE COURT: How long will it take you to pursue this investigation?

MR. HIGHSAW: I should be through after I introduce this document, and I have about three brief documents to put in by Mr. Chase. He will identify them. Then I have two other documents, which I think will be stipulated

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into the record. Then I might have about five minutes of testimony. I don't believe it should take more than a half hour at the most, Your Honor.

THE COURT: I had hoped to finish at 4:00 or 4:30. If we can't finish today, we will have to put it over for a month or two.

MR. HIGHSAW: That places the Defendants in a difficult position, Your Honor, because of the existence of the ex parte restraining order, and I am not at this point putting any blame whatsoever on Mr. Warner, because obviously we asked that it be continued last week when we got the papers only on short notice. Then, of course, we didn't get started yesterday because of the unfortunate weather conditions.

I hoped I could ask Your Honor's indulgence to bear with me for a few minutes and permit me to run a few minutes over Your Honor's usual time. I realize the Court has a heavy schedule, and if it was not for the fact that there

was this restraining order in existence I wouldn't ask this at all of Your Honor.

MR. WARNER: May I make a suggestion? To move this matter along we might stipulate to some of these documents, subject to their materiality, of course.

THE COURT: I think you should do that.

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MR. HIGHSAW: That is acceptable. I offer Defendants' Exhibit L.

MR. WILKINSON: I object to it for the same reasons stated.

THE COURT: Overruled. It will be admitted for the limited purpose that the Court indicated in connection with the offering of Exhibit J.

MR. HIGHSAW: That is all I have, Mr. Hampton. I would now like to call Mr. Chase as a witness.

* * *

Thereupon, the Defendants called as a witness,

W. E. B. CHASE,

who, having been previously duly sworn, testified as follows:

EXAMINATION BY MR. HIGHSAW:

Q Will you give your name, please?

A William Eaton Bauer Chase.

Q What is your present address, Mr. Chase?

A 1205 Cherrylond, Detroit.

Q What is your present position, Mr. Chase?

A Vice President for the Brotherhood of Railroad Trainmen.

Q What are your duties?

A To assist the President in any way that he directs,

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such as meeting with committees, managements, lodges, and various groups of all descriptions.

Q Was one of the directions and assignments you had from the President of Brotherhood of Railroad Trainmen the dispute between the New York Central Railroad and

the Brotherhood of Railroad Trainmen with respect to the North Toledo Yard?

A It was.

Q Have you received in the course of your work in that dispute all the documents and letters and other papers relating to that that have come to the Brotherhood of Railroad Trainmen?

A Yes, sir.

Q Now, this document which I have in my hand, Defendants' Exhibit M, purports to be an application for Mediation Services addressed to the National Mediation Board, dated July 7, 1955, on the official form of that agency. I would like you to take a look at it and testify whether or not the document is a true and correct copy of the Application made by the Brotherhood of Railroad Trainmen on that date?

A It is.

MR. HIGHSAW: I offer Defendants' Exhibit M in evidence.

MR. WARNER: No objection.

THE COURT: Without objection it will be admitted.

Q (By Mr. Highsaw) Mr. Chase, there is a provision on this Defendants' Exhibit M, which reads: "If an agree-

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ment governing rates of pay, rules, or working conditions is in effect, give name of parties thereto and date thereof. If there is no such agreement, so state." Following that there is typewritten on Defendants' Exhibit M the following: "New York Central — Lines West — Brotherhood of Railroad Trainmen — August 15, 1942."

Does that appear on Defendants' Exhibit M?

A It does.

Q I have here a document which I would like to ask to be identified as Defendants' Exhibit N, which states on its face that it is an agreement between the New York Central Railroad Company "Line West of Buffalo" Agreement with the Brotherhood of Railroad Trainmen, "Gov.

erning Yardmen And Switchtenders Employed in All Yards Outside the Chicago Switching District Except Ohio Central Yards — Effective August 15, 1942."

I will ask you to take a look at that agreement and testify whether or not that is a true and correct copy of the agreement between the New York Central Lines West and the Brotherhood of Railroad Trainmen which was made on that date?

A It is.

Q Can you state to the Court whether or not from your own knowledge, Mr. Chase, this Defendants' Exhibit N is the agreement of August 15, 1942, which was referred to in Defendants' Exhibit M?

A It is.

MR. HIGHSAW: I offer Defendants' Exhibit N in evidence.

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MR. WILKINSON: I object to it for the same reasons stated.

THE COURT: It will be admitted for the limited purpose.

Q (By Mr. Highsaw) Did the Brotherhood of Railroad Trainmen make any representations to the New York Central Railroad claiming that the closing down of the North Toledo Yard violated this agreement of August 15, 1942?

A I believe they did at the lower level, and during the meeting we made those manifestations to the mediator handling it, and that in all instances the Board member advised us that the railroad was unwilling to negotiate that.

Q Will you identify for the Court the provisions of the agreement that you represented to the Mediation Board were involved in this dispute?

A That is under "Definition of Yard Work (b) and (c)—Article I." (b) says: "Switching of any kind, including transfer or puller service, performed exclusively within switching limits, shall be considered yard work and

performed by yardmen."

The next paragraph under (b) says this: "Work, construction or pilot service when confined to work entirely within switching limits, shall be performed by yardmen."

And (c) states that: "Present practices in regard to character of work permissible or duties required of road crews at terminals will not be extended."

It was our position at all times that New York Cen-

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tral's action in closing this yard was in violation of both of those articles.

Q Was there any other article in this agreement involved in this dispute?

A Not that I know of.

Q What about Article eleven?

A That is seniority. That was violated. That was one of the main factors in dispute. For the benefit of the Judge, I might say this: in this dispute it has been maintained that the carrier cannot farm out work to, ——

MR. WILKINSON: (Interposing) There is only one issue in this case. The New York Central Railroad, ——

A (Interposing) Well, so far as the agreements are concerned, they specifically state that that will be maintained separately, the transfer of work.

MR. WILKINSON: The transfer of work from one seniority district to another, but it is one railroad.

MR. HIGHSAW: You concede, though, that the seniority district of the Stanley Yard is a seniority district in which any of the firemen or enginemen or yardmen who now work or did work at the North Toledo Yards have no seniority rights and cannot bid for work in the Stanley Yards.

MR. WILKINSON: I concede that, and I also say

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it is a matter of negotiation between the locals to decide how they want the work allocated, and the New York Cen-

tral Railroad will assist in working out any arrangement. We have never refused to negotiate that question in any way.

A I disagree with that statement, sir.

MR. WARNER: What counsel is trying to inject here is not covered by the issues in this case. They have not set it up in their Answer.

MR. HIGHSAW: I am satisfied with the statement Mr. Wilkinson just made. I was trying to establish the fact he has now conceded; that the closing of the yard would change the seniority arrangements, that that work is being transferred to the Stanley Yards, and they cannot exercise seniority rights there because it is another seniority district.

Will you also concede that those employees would have to exercise seniority rights in the so called Airline Junction Yards?

MR. WILKINSON: I will say this: that each Local Seniority District and all of the men in these Districts have rights in their own Districts, which they can exercise.

MR. HIGHSAW: Would you also concede that along about 1937 the seniority rosters of the Michigan Central men, who had rights in the North Toledo Yards, was merg-

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ed with the New York Central rosters?

MR. WILKINSON: I refuse to make any more concessions, Mr. Highsaw, because it is completely beyond the issues here.

MR. HIGHSAW: If they would agree to that, I would not have to ask the witness.

MR. WILKINSON: Those matters are not at issue here.

MR. HIGHSAW: You alleged in your Complaint this is what our people argued with you about.

MR. WARNER: Why do you object to the single order? The order solely restrains you from striking because of the closing of the North Toledo Yards. That is all we

are asking the Court to order.

MR. HIGHSAW: I will tell you, Mr. Warner; because in closing the North Toledo Yard you changed the entire bargaining framework with respect to these matters we are talking about now. You put these employees in a position where they have to come to you and bargain with you about where these displaced men from the North Toledo Yards are going, where they are going to get their jobs, particularly the men on the puller service, and when they come to bargain with you they have no more bargaining power. That is why it is important in this matter, and that is precisely why we object to an injunction or the ex

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parte restraining order, and we are trying to get that order dissolved today and oppose your permanent injunction, and we claim that our controversy with you about the effects of the closing of the yard is a legitimate labor controversy and that we want to bargain with you about that and mediate with you about that. We feel we are entitled to do that.

That is my answer to you, Mr. Warner.

THE COURT: Put a question to the witness. Let us get on with the trial.

Q (By Mr. Highsaw) I don't want you to argue with his Honor as to whether you are right or wrong, Mr. Chase, but just tell the Court why you claimed to the carriers, — — in other words, the nature of your dispute with the carrier with respect to this definition of yard work in this agreement, — — why you said that the closing violated that agreement?

A Because of the two paragraphs I just read. Under the first one this contract gives us exclusive right to the work in the North Toledo Yard. In other words, the work has not dried up. The work that was performed in the North Toledo Yard is still here and the carrier has violated this section by farming out this work, as far as this work is concerned.

MR. WILKINSON: I object to that answer. That

is your conclusion, isn't it, that we have violated it?

MR. HIGHSAW: I am referring to the claim that

[121]

was made, not arguing if it is correct. That is all he has said thus far.

A The rule (c) states: "Present practices in regard to character of work permissible or duties required of road crews at terminals will not be extended." (Defendants' Exhibit N.) By elimination of the yard they extended the services of the road crews at the expense of our yardmen. That is the argument, the dispute we were confronted with.

MR. HIGHSAW: I believe Defendants' Exhibit N has been admitted subject to the limitations, is that correct?

THE COURT: That is correct.

Q (By Mr. Highsaw) I have a document here which I have had marked as Defendants' Exhibit O. Defendants' Exhibit O is a document from Mr. R. W. Fuller, dated January 18, 1956, stating that "after completion of the day's work on Friday, January 20, 1956 BUM 5, Second Trick, will be discontinued. After completion of work on First Trick, Saturday, January 21, 1956, BUM No. 5, First Trick will be discontinued. After completion of the Second Trick at North Toledo Yard on January 21, 1956, NORTH TOLEDO NO. 1 Job on all three tricks will be discontinued."

Mr. Chase, I present this document to you and ask you if that is the actual copy of the document which you received from the New York Central Railroad?

A It is.

Q I will further ask you, referring to this document,

[122]

to explain to the Court what the term "BUM No. 5" means?

A BUM No. 5, Your Honor, is a transfer crew in yard service that transferred cars from Airline Junction to this North Toledo Yard and the first and second trick at North Toledo made up six other runs. By this notice the work is abolished in the North Toledo Yards and transferred to

the T & O C and the yard transfer crews were eliminated and that was performed by other yard crews, which we consider a violation of the contract.

Q What claim did you make to the carrier with respect to the discontinuance of BUM No. 5 work as a result of the closing of the North Toledo Yard? Did you make a claim to the carrier with respect to the BUM No. 5 work?

A Our Local representatives did, Your Honor, and I handled the question twice. At no time were we able to negotiate with the carriers on it. From what the Mediation Board told us, the carriers refused to negotiate the situation, that they would close the yard, period, and negotiate with us later.

Q There is a sharp distinction in railroad work as between road work and yard work, is there not?

A Yes, sir. The two seniority groups are inviolate and one cannot infringe on the rights of others.

MR. HIGHSAW: I offer in evidence Defendants' Exhibit O.

THE COURT: It will be admitted for the limited purpose stated.

MR. HIGHSAW: I will ask the Clerk to mark two

[123]

more documents as Defendants' Exhibits P. and Q. I will have no testimony with regard to them.

(Thereupon, the said documents were marked Defendants' Exhibits P and Q by the Clerk.)

Q (By Mr. Highsaw) Now, Mr. Chase, you have pointed out the distinction between yard crews and road crews, and I believe you said road crews would now perform this work, or claimed that. Do you know what road crews would perfom this work?

A The Michigan Central road crews.

Q Which was formerly performed by New York Central yard crews?

A It was performed by a combination of both New York Central and Michigan Central yard crews.

Q Would you identify Mr. R. W. Fuller, who signed Defendants' Exhibit C? Tell the Court who he is?

A I never met the gentleman, but I think he is either Trainmaster or Superintendent. He is one of the operating officials who has a right to issue those bulletins.

Q I have here Defendants' Exhibit P, a communication from Mr. Kennedy, President of the Brotherhood of Railroad Trainmen to Mr. Thompson, Secretary of the National Mediation Board, Washington, D. C., dated July 8, 1955, agreeing to the Board's request to confer with the Board with respect to the North Toledo Yard. Look at the document and testify whether it is a true and correct copy of a document from your files?

A It is.

MR. HIGHSAW: I offer in evidence Defendants'

[124]

Exhibit P.

THE COURT: It will be admitted for the limited purpose.

Q (By Mr. Highsaw) I have in my hand another document signed by Mr. Kennedy, a copy of a wire sent by him to you asking you to postpone the proposed strike because the National Mediation Board has taken jurisdiction over the dispute involving the North Toledo Yard. Look at the document and testify whether it is a true and correct copy of the telegram you received on August 5, 1955?

A It is.

THE COURT: What is the date of that document?

MR. HIGHSAW: August 5, 1955, Your Honor, and I have a copy for the Court.

Now, I offer in evidence Defendants' Exhibit Q, and I would ask that Your Honor particularly note Defendants Exhibit Q in the light of the statements of counsel as to the reasons why the Brotherhood did not strike on August 5, 1955. I think that the document speaks for itself.

THE COURT: Without objection it will be admitted
MR. HIGHSAW: That is all, Mr. Chase.

• • •

[125]

EXAMINATION BY MR. WILKINSON:

• • •

Q Now, at any time has the New York Central Railroad refused to negotiate any changes in working conditions?

A In the mediation proceedings in July of last year and in November and December of last year, — — I believe in both instances with Mediators McSwan and O'Neill — — they conveyed the information to us in all instances that the carrier refused to negotiate.

• • •

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(Thereupon, Mr. Highsaw handed certain documents to Mr. Warner for examination.)

MR. WARNER: We offered to stipulate. What is the purpose of this?

MR. HIGHSAW: Would you stipulate that these are true and correct copies of minutes put out by the New York Central System of the meeting of June 11, 1955, called by Mr. Shea, who was Superintendent of the New York Central Railroad in Toledo, to advise and discuss with the employees involved in the closing of the North Toledo Yard. The other document I have is a document containing the minutes put out by the New York Central System of a meeting held in Cleveland, Ohio, on July 11, 1955, conducted by Mr. Maxwell, General Superintendent of the New York Central Railroad with respect to that, which contains the statements made by the railroad officials with respect to this matter.

MR. WARNER: We will stipulate that those are the minutes, subject to materiality and relevancy.

MR. HIGHSAW: I will offer the minutes of the June 11th meeting as Defendants' Exhibit R, and I will offer the

minutes of the July 11th meeting as Defendants' Exhibit S.

[127]

MR. WARNER: Subject to our objections, Your Honor, as to their relevancy and materiality.

• • •

[129]

Thereupon, the Defendants called as a witness,

F. C. MONTGOMERY,

who, having been previously duly sworn, testified as follows:

EXAMINATION BY MR. HIGHSAW:

Q Would you give us your name?

A Floris C. Montgomery.

Q What is your position, Mr. Montgomery?

A Secretary of the General Committee, New York Central Lines West, Brotherhood of Railroad Trainmen.

Q Did you, Mr. Montgomery attend a meeting in General Superintendent Maxwell's office in July, 1955, the subject of the minutes identified as Defendants' Exhibit S?

A I did.

Q You heard everything that was said by Superintendent Maxwell at that meeting?

A I did.

Q Did Superintendent Maxwell make any statement at that meeting with respect to the effect of the closing of the North Toledo Yard upon the loss of jobs of the men involved?

MR. WARNER: I object to this.

THE COURT: What do you expect to show by this?

MR. HIGHSAW: That this was another element in the dispute, another thing that the Brotherhood was arguing with the New York Central Railroad about. We don't

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expect to prove before Your Honor, expect to prove it was necessarily true; that is not the issue.

THE COURT: Who is the fellow who is said to have made this statement?

MR. HIGHSAW: He was identified in the other exhibit as the General Superintendent of the New York Central Railroad covering this area. In other words, this is an admission against interest. He made it at this meeting and Mr. Montgomery was there. It did not show up in the other minutes as to why Mr. Maxwell did not put it in his own minutes.

THE COURT: He may answer.

MR. HIGHSAW: I expect I had better have the question read.

(Thereupon, the question referred to was read by the Reporter as follows: "Q Did Superintendent Maxwell make any statement at that meeting with respect to the closing of the North Toledo Yard upon the loss of jobs of the men involved?")

A He did.

Q What was the statement?

MR. WARNER: I object. It is not material.

THE COURT: Overruled.

Q (By Mr. Highsaw) What was the nature of that, Mr. Montgomery?

[131]

A He said he admitted that there would be dislocation and that the yardmasters, the carmen and the clerks would be, — — would suffer dislocation in this case, and that it was his understanding that the carmen who held point seniority at the North Toledo Yard, that arrangements were being made to dovetail or work out some seniority arrangement with the carmen at North Toledo or at Airline. He also said that, — — I don't know if this was said right then, — but it was said about the same time, — but he also said or admitted that certain economies might accrue from this closure, but it was in the interest of better service and to meet competition.

MR. HIGHSAW: That's all.

MR. WARNER: Just one question.

* * *

EXAMINATION BY MR. WARNER:

Q As one who attended that meeting, you received a copy of the minutes of the meeting, Exhibit S, did you not?

A Yes, sir.

Q And that was not too long after the meeting had been held, was it?

A Some considerable time.

Q Did you at any time make any objection that the minutes were incorrect?

A For the simple reason, ——

Q (Interposing) I say, did you?

[132]

A I did not.

Q Yes. Did you, yourself, take any minutes that you may have here in Court?

A I did.

MR. HIGHSAW: There is a copy. We would like to present them to Your Honor.

Q (By Mr. Warner) Was this a report made to your Brotherhood, that you made to your Brotherhood?

A That's right.

MR. HIGHSAW: Mr. Warner brought this up. I will now offer these minutes of Mr. Montgomery's. I will offer that as Defendants' Exhibit T.

MR. WARNER: That's all, Mr. Montgomery.

MR. HIGHSAW: The Defendants rest, Your Honor.

MR. WARNER: I object to it on grounds of immateriality.

THE COURT: It will be admitted for the limited purpose.

Any rebuttal?

Then the case is submitted.

* * *

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CERTIFICATE

Civil Action No. 7493

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al., etc.,

Defendants.

I, Herbert N. Archambault, Official United States Court Reporter, do hereby certify that the foregoing record is a true and complete transcript of my shorthand notes taken upon the trial of the above-entitled cause of action, before Honorable Frank L. Kloeb, United States District Judge, without the intervention of a jury.

IN WITNESS WHEREOF, I have hereunto set my hand at Toledo, Ohio, this sixteenth day of February, A. D. 1956.

Herbert N. Archambault
Official U.S. Court Reporter
315 U.S. Court & Custom House
Toledo, Ohio

Plaintiff's Exhibits

EXHIBIT 1

NEW YORK CENTRAL SYSTEM

W. A. Shea
Superintendent
F. B. Gill
Asst. Superintendent
W. G. Chase
Asst. Superintendent

Toledo 4, Ohio, June 7, 1955 WAS-11

Dear Sir:

For your information, North Toledo Yard will be closed effective 11:00 P.M. July 10, 1955.

Meeting will be held in the Conference Room, Central Union Terminal, Toledo, at 9:00 A.M. June 11, 1955, to discuss this matter.

Yours truly,

Superintendent

EXHIBIT 2

NEW YORK CENTRAL SYSTEM

Copy

Toledo—June 7, 1955

Messrs.

P. J. Ryan, General Chairman, BofLE
5913 W. 87th Place, Oak Lawn, Ill.
J. F. Cone, General Chairman, BofLE,
439 Clark St., Toledo 5, Ohio.
R. E. Brown, Jr., General Chairman, BofLF&E,
Monger Bldg., Elkhart, Ind.
Z. M. Jones, Acting General Chairman, BofLF&E,
932 W. Mound St., Columbus, Ohio.
W. J. Winston, General Chairman, BofBC,
Colonial Hotel, Cleveland, O.
Mr. Daniel Conzo, Vice General Chairman, BofMWE,
10209 Ramona Bldg., Cleveland, O.
L. E. Gerard, General Chairman, O.R.C.,
58 Westview Ave., Hamburg, N.Y.
W. E. Atkinson, General Chairman, BofRT,
222 Wilson Ave., Columbus, O.
E. F. Kruse, General Chairman, BofRT
Colonial Hotel, Cleveland, O.
H. M. Washer, General Chairman, RRYMNA,
11505 Haseldell Rd., Cleveland, O.
T. M. Hadley, General Chairman, O.R.T.,
1330 W. 30th St., Erie, Pa.

Gentlemen:

There is attached hereto copy of letter sent the Local Chairmen shown on the attached list. This for your information.

Yours truly,

(Sgd) W. A. Shea
Superintendent

Encl.

R. E. Swert, Local Chairman, BofRT,
350 Field Ave., Toledo, Ohio
L. J. Collins, Local Chairman, BofRT,
5404 Lewis Ave., Toledo, Ohio
H. M. McKenna, Local Chairman, BofRT,
14889 San Juan, Detroit, Mich.
R. F. Hardy, Local Chairman, BofRT,
10821 Kramer Ave., Detroit, Mich.
C. H. Miley, Local Chairman, BofRT,
211 Wilbur, Walbridge, O.
H. A. Arbeau, Local Chairman, BofRT,
15901 Mansfield, Detroit, Mich.
J. J. Lorigan, Local Chairman, BofRC,
749 Parker Ave., Toledo, Ohio
W. T. Johnson, Local Chairman, BofRC,
826 Page St., Toledo, Ohio
H. A. Young, Local Chairman, BofLF&E,
1804 - 15th St., Wyandotte, Mich.
F. R. Kitzler, Local Chairman, BofLF&E,
876 McKinley Ave., Toledo, Ohio
L. G. Crippen, Local Chairman, BofLF&E,
1024 Woodsdale, Toledo, Ohio
W. F. Snell, Local Chairman, BofLF&E,
1504 E. Mishawa Rd., Elkhart, Ind.
G. B. Henney, Local Chairman, BofLE,
RR1, Box 870, Walbridge, Ohio
R. L. Johnson, Local Chairman, BofLE,
151 Champion St., Toledo, Ohio
M. W. Hayek, Local Chairman, BofLE,
5506 Mead Ave., Dearborn, Mich.
H. C. Smith, Local Chairman, O.R.C.,

19636 Wehsden Ave., Detroit, Mich.
V. M. Barnes, Local Chairman, O.R.C.,
354 Langdon St., Toledo, Ohio
R. B. Myers, Local Chairman, O.R.T.,
163 Logan Ave., Westerville, Ohio
L. J. Coehrg, Local Chairman, BRYMNA,
220 Marion St., Toledo, Ohio
F. C. Stoltz, Local Chairman, ATDA,
2205 Michigan, Toledo, Ohio
W. C. Grove, Local Chairman, BRCofA,
539 Starr Ave., Toledo, Ohio
Nick Todoroff, Local Chairman, BMofWE,
1673 Avondale, Toledo, Ohio
W. R. Frederick, Local Chairman, BRSA,
882 Brighton, Toledo, Ohio
M. D. Sample, Local Chairman, BofLE,
RR1 Box 380, Edwardsburg, Mich.
T. C. Rich, Local Chairman, O.R.C.,
406 Douglas Rd., Jackson, Mich.

EXHIBIT 3

WESTERN UNION TELEGRAM

NA158 LONG GOVT PD. ID WASHINGTON DC
7 257PME.

JUL 7 PM 4 37

L W HORNING, V P PERSONNEL
NEW YORK CENTRAL SYSTEM.
466 LEXINGTON AVE.
FOLLOWING TELEGRAM RECEIVED FROM PRESIDENT KENNEDY OF BRT QUOTE SERIOUS SITUATION EXISTING NEW YORK CENTRAL RAILROAD LINES WEST AT TOLEDO OHIO AS THE RESULT OF THE MANAGEMENT ARBITRARILY CLOSING NORTH TOLEDO YARD WITHOUT NEGO-

TIATIONS REQUEST YOUR BOARD TAKE IMMEDIATE JURISDICTION OVER THIS MATTER AND NOTIFY CARRIER TO HOLD THE MATTER STATUS QUO PENDING MEDIATION PROCEEDINGS LETTER FOLLOWS UNQUOTE PLEASE WIRE YOUR STATEMENT.

E C THOMPSON SECRETARY
NATIONAL MEDIATION BOARD

EXHIBIT 4

WESTERN UNION TELEGRAM

JUL 8 PM 2 12

NA099 GOVT PD. WASHINGTON DC 8 1207PME.
L W HORNING, VICE PRESIDENT
PERSONNEL. NYC SYSTEM.
466 LEXINGTON AVE.
WE ARE ADVISED THAT NEW YORK CENTRAL MANAGEMENT PROPOSES TO CLOSE THE NORTH TOLEDO YARD EFFECTIVE 11 PM JULY 10, 1955 BLE AND BLF&E STATE THAT SERVICE AT NORTH TOLEDO YARD AS BETWEEN MICHIGAN CENTRAL AND NEW YORK CENTRAL LINES WEST ENGINEERS IS COVERED BY AGREEMENT DATED AUGUST 3, 1932, SUPPLEMENTED BY MEMORANDUM OF UNDERSTANDING EFFECTIVE MAY 1, 1948 AND THAT CLOSING OF NORTH TOLEDO YARD WOULD SERIOUSLY AFFECT THESE AGREEMENTS BY DISTURBING AGREED TO ALLOCATION OF SERVICE BETWEEN THE TWO COMMITTEES AT TOLEDO OHIO. ORGANIZATIONS FURTHER CLAIM THAT CARRIER HAS NOT COMPLIED WITH PROVISIONS OF SECTION, RAILWAY LABOR ACT IN FAILING TO SERVE FORMAL SECTION 6 NOTICE OF THEIR INTENTION TO CLOSE NORTH TO-

LEDO YARD AND HAVE APPLIED FOR BOARD'S MEDIATION SERVICES. WITHOUT PASSING ON PROPRIETY OF FORMAL DOCKETING OF SUCH APPLICATIONS, WE HAVE ASSIGNED CORRESPONDENCE FILE C-3386 TO THIS DISPUTE AND BOARD HEREBY REQUESTS CARRIER TO DEFER CONTEMPLATED CLOSING OF NORTH TOLEDO YARD UNTIL MATTER CAN BE DISCUSSED WITH REPRESENTATIVES OF CARRIER AND ORGANIZATIONS BY A BOARD REPRESENTATIVE. PLEASE ACKNOWLEDGE AND ADVISE IF THIS REQUEST WILL BE COMPLIED WITH. JOINT. HORNING, BROWN, GILBERT AND KENNEDY. BY DIRECTION OF NATIONAL MEDIATION BOARD.

E C THOMPSON SECRETARY
NATIONAL MEDIATION BOARD.

EXHIBIT 5

COPY
WESTERN UNION
1MZ-9-A, L. W. HORNING, VP, PERS.,
NYC RR, 466 LEXINGTON AVE, NY, NY
NEW YORK, JULY 8, 1965

E. C. THOMPSON, SECRETARY
NATIONAL MEDIATION BOARD
DEPARTMENT OF THE INTERIOR BLDG.
WASHINGTON 25 D. C.

RECEIPT ACKNOWLEDGED YOUR TELEGRAM REQUESTING WE DEFER CONTEMPLATED CLOSING OF NORTH TOLEDO YARD UNTIL MATTER CAN BE DISCUSSED WITH REPRESENTATIVES OF CARRIER AND ORGANIZATIONS BY BOARD REPRESENTATIVE. WE WILL COMPLY WITH BOARD'S REQUEST AND HOPE BOARD WILL ACT PROMPT-

LY IN THE MATTER SINCE WE DO NOT WANT TO DELAY THE CLOSING OF THIS YARD INDEFINITELY. OUR GENERAL MANAGER, R. H. McGRAW, IN CLEVELAND AND GENERAL MANAGER E. C. JOHNSON IN DETROIT WILL REPRESENT CARRIER AND I SUGGEST CONFERENCES IN TOLEDO.

L. W. HORNING

EXHIBIT 6

WESTERN UNION

1955 AUG. 1 PM 8 42

NA473 GOVT PD. WASHINGTON DC 1 NFT.
L W HORNING, VICE PRESIDENT PERSONNEL.
NY CENTRAL SYSTEM 466 LEX AVE.
RE FILE C-2386 PROPOSED CLOSING OF NORTH YARD, TOLEDO, NEW YORK CENTRAL LINES. BOARD HAS CONSIDERED POSITION OF ORGANIZATIONS THAT CARRIER HAS NOT COMPLIED WITH PROVISIONS OF SECTION 6, RAILWAY LABOR ACT BY FAILING TO SERVE FORMAL NOTICE OF INTENTION TO CLOSE NORTH TOLEDO YARD, ALSO PRESENT STATUS AS REPORTED BY MEDIATOR. IT SEEMS CLEAR THAT THERE IS NO AGREEMENT IN EFFECT BETWEEN THE CARRIER AND ANY ORGANIZATION REQUIRING MAINTENANCE OF YARDS OR THE OPERATING FACILITIES AND NO REQUEST FOR SUCH AN AGREEMENT. IN THE ABSENCE OF A FORMAL NOTICE FOR A RULE COVERING SUCH OPERATIONS, BOARD DOES NOT HAVE JURISDICTION. ARBITRARY CHANGES, IF ANY, IN MEMORANDUM AGREEMENTS OF AUGUST 3, 1932 AND MAY 1, 1948 COVERING ALLOCATION OF SERVICES WOULD CONSTITUTE VIOLATION OF THOSE AGREEMENTS AND WOULD BE REFERABLE TO NATION-

AI RAILROAD ADJUSTMENT BOARD. THIS BOARD IS THEREFORE UNABLE TO DOCKET APPLICATION OF ORGANIZATIONS AND IS CLOSING ITS FILE C-2386. BY ORDER OF THE NATIONAL MEDIATION BOARD, JOINT HORNING, BROWN, GILBERT, KENNEDY, MACSWAN.

E C THOMPSON SECRETARY.

EXHIBIT 7

NEW YORK CENTRAL SYSTEM

Toledo, Ohio August 2, 1955

NOTICE NO. 35

WAS:mp

ALL CONCERNED:

Effective at 11:00 p.m., August 7th, North Toledo Yard will be closed.

W. A. Shea
SUPERINTENDENT

NO ACKNOWLEDGEMENT NECESSARY

EXHIBIT 8

WESTERN UNION TELEGRAM

AUG 4 PM 2 38

NA 132 GOVT PD. ID WASHINGTON DC 4 145PME.
L W HORNING VICE PRESIDENT PERSONNEL.
NEW YORK CENTRAL SYSTEM.
466 LEXINGTON AVE.
WE ARE ADVISED BY THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AND BROTHERHOOD OF RAILROAD TRAINMEN THAT THOSE ORGANIZATIONS HAVE SET STRIKE DATE

FOR SIX AM EASTERN STANDARD TIME SUNDAY AUGUST 7, 1955 ON NEW YORK LINES WEST ACCOUNT MANAGEMENT ARBITRARILY CLOSING NORTH TOLEDO YARD. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN ALSO SET STRIKE DATE FOR SAME TIME ON MICHIGAN CENTRAL. BOARD HEREBY PROFFERS ITS MEDIATION SERVICES UNDER PROVISIONS OF SECTION FIVE FIRST PARAGRAPH (B) UNDER ITS DOCKET CASE A-4923 AND REQUESTS ORGANIZATIONS TO DEFER STRIKE DATE PENDING MEDIATION. ATTENTION OF ALL CONCERNED IS DIRECTED TO STATUS QUO PROVISIONS OF SECTION SIX OF RAILWAY LABOR ACT. PLEASE ACKNOWLEDGE. JOINT HORNING GILBERT AND KENNEDY.

E C THOMPSON SECRETARY
NATIONAL MEDIATION BOARD.

CFM 7 1955 A-4923.

EXHIBIT 9
COPY
TELEGRAM

hh/h

IMZ-9-A 466 Lexington Avenue
New York 17, N.Y.
August 4, 1955

Mr. E. C. Thompson, Secretary
National Mediation Board
Department of Interior Bldg.
18th and E Streets, N.W.
Washington, D. C.

RECEIPT ACKNOWLEDGED YOUR WIRE DATE CASE A-4923. WE WILL COOPERATE WITH MEDIATION EFFORTS OF BOARD THIS CASE.

L. W. Horning

EXHIBIT 10

NEW YORK CENTRAL SYSTEM

Toledo Division—Toledo Ohio Aug. 4, 1955

NOTICE NO. 37

All Concerned:

At request of the National Mediation Board we will postpone closing North Toledo yard which we had planned to do effective 11:00 p.m. Aug. 7th.

W. A. Shea
Superintendent

(no acknowledgement necessary)

EXHIBIT 11

NATIONAL MEDIATION BOARD
WASHINGTON

December 14, 1955
Case No. A-4923

Mr. L. W. Horning, Vice President—Personnel
New York Central System
466 Lexington Avenue
New York, New York
Mr. Guy L. Brown, Grand Chief Engineer
Brotherhood of Locomotive Engineers
1118 BLE Building
Cleveland 14, Ohio
Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen & Enginemen
318 Keith Building
Cleveland 15, Ohio
Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio
Gentlemen:

Reference is made to our Case No. A-4923 which cov-

ers a dispute between the New York Central Railroad, Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier.

Mediation services of the Board were proffered in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a. m., EST, Sunday, August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

By direction of the National Mediation Board.

E. C. Thompson
Secretary

EXHIBIT 12

NEW YORK CENTRAL SYSTEM

TOLEDO January 17, 1956 WAS-11

NOTICE NO. 67

ALL CONCERNED:

Effective 11:00 P.M. Saturday, January 21, 1956, North Toledo Yard will be closed.

W. A. Shea
Superintendent

CC to—Messrs.

R. H. McGraw
C. D. Buford
E. C. Johnson
A. B. Shenefelt

COPY

EXHIBIT 13

WESTERN UNION

1956 JAN 19 PM 5 17

NA205 RX GOVT PD—I D WASHINGTON DC
19 504 PME
L W HORNING. VICE PRES—PERS
NY CENTRAL LINES
FOLLOWING WIRE RECEIVED DATE FROM MESSRS KENNEDY AND GILBERT QUOTE EMPLOYEES OF NEW YORK CENTRAL LINES WEST AS REPRESENTED BY BROTHERHOOD OF RAILROAD TRAINMEN AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AUTHORIZED TO WITHDRAW FROM SERVICE IN A LEGAL STRIKE EFFECTIVE 11:00 PM. EST SATURDAY JANUARY 21 1956 ACCOUNT OF NEW YORK CENTRALS NOTICE CLOSING NORTH TOLEDO YARD AT THAT TIME UNQUOTE
F C THOMPSON EXECUTIVE SECRETARY

EXHIBIT 14

WESTERN UNION TELEGRAM

1956 JAN 20 AM 11 58

NA077 DL PD. FAX CLEVELAND OHIO
20 1026AME.
L W HORNING.
466 LEXINGTON AVE.
YOUR ACTION TO CLOSE NORTH TOLEDO YARDS DISREGARDING SENIORITY RIGHTS OF EMPLOYEES AND YOUR FAILURE TO RECOGNIZE AGREEMENTS NOW IN EFFECT AS WELL AS YOUR RE-

FUSAL TO HANDLE THE CONTEMPLATED CHANGES AS PROVIDED BY THE RAILWAY LABOR ACT LEAVE US NO ALTERNATIVE EXCEPT TO AUTHORIZE EMPLOYEES REPRESENTED BY OUR BROTHERHOODS ON THE NEW YORK CENTRAL LINES WEST TO WITHDRAW FROM SERVICE EFFECTIVE 11:00 PM EASTERN STANDARD TIME JAN 21 1956 IN ORDER THAT THEY MAY PROTECT THEIR RIGHTS.

W E B CHASE VICE PRESIDENT BRT
M W HAMPTON VICE PRESIDENT BLF&E.

EXHIBIT 15

WESTERN UNION TELEGRAM

IMZ-9-A New York Central Railroad
466 Lexington Ave. N. Y.

NEW YORK, JANUARY 20, 1956

MR. M. W. HAMPTON, VICE PRESIDENT
BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN
328 KEITH BUILDING
CLEVELAND 15, OHIO

MR. W. E. B. CHASE, VICE PRESIDENT
BROTHERHOOD OF RAILROAD TRAINMEN
STANDARD BUILDING
CLEVELAND 13, OHIO

YOUR WIRE DATE. IN VIEW OF TEMPORARY RESTRAINING ORDER ISSUED THIS DAY BY US DISTRICT COURT JUDGE KLOEB IN TOLEDO I DEEM IT BEST AT THIS TIME TO MAKE NO COMMENT TO YOUR WIRE OTHER THAN TO SAY THAT

WE REGRET YOU DECIDED TO TAKE STRIKE ACTION. JOINT HAMPTON AND CHASE.

L. W. HORNING

(Via Mail)
cc: Messrs.

K. L. Moriarity
A. W. Laskoske
R. H. McGraw
W. W. Wilkinson

~~Defendants' Exhibits~~

DEFENDANTS' EXHIBIT A

"FPB

July 8, 1955 Cleveland, Ohio

Mr. E. C. Thompson
Executive Secretary
National Mediation Board
19th and E Streets, N.W.
Washington 25, D. C.

Under date June 7, 1955 management New York Central System notified by letter representatives of train and engine service employees that effective 11:00 P.M., July 10, 1955 the North Toledo Yard would be closed. The service at North Toledo Yard as between Michigan Central and New York Central, Lines West engineers is covered by agreements dated August 3, 1932, supplemented by Memorandum of Understanding effective May 1, 1948. Closing of North Toledo Yard seriously affects the agreements referred to above by disrupting agreed to allocation of service between the two committees at Toledo, Ohio. It is our position that the carrier has not complied with provisions of Section 6 of the Act in failing to serve formal Section 6 Notice of their intention to close North Toledo Yard. Accordingly we are today filing Form NMB-2 application with

your Honorable Board to request that status quo provisions of Section 6 be maintained until the controversy has been finally acted upon as required by Section 5 of the Act.

Guy L. Brown
Grand Chief Engineer, BLE
H. E. Gilbert
President, BLF&E"

DEFENDANTS' EXHIBIT B

"FPB

Cleveland, Ohio July 8, 1955

Mr. E. C. Thompson, Secretary
National Mediation Board
18th and E Streets, N.W.
Washington 25, D. C.

Reourtel date, investigation carriers your Board, New York Central System, BLE-BLF&E. Correct second sentence to read QUOTE The service at North Toledo Yard as between Michigan Central and New York Central, Lines West, engineers and firemen is covered by agreements dated August 3, 1932, supplemented by Memorandum of Understanding effective May 1, 1948. Unquote.

Guy L. Brown, GCE, BLE
H. E. Gilbert, Pres., BLF&E"

DEFENDANTS' EXHIBIT C

Cleveland, Ohio July 8, 1955

Mr. E. C. Thompson, Secretary
National Mediation Board
Department of Interior Building, N.E., 5th Floor
18th and E Streets, N.W.
Washington 25, D.C.

Dear Sir:

Confirming joint wire request data, reading:

"Under date June 7, 1955 management New York Central System notified by letter representatives of train and engine service employees that effective 11:00 P.M., July 10, 1955 the North Toledo Yard would be closed. The service at North Toledo Yard as between Michigan Central and New York Central Lines West, Engineers and Firemen are covered by agreements dated August 2, 1938, supplemented by Memorandum of Understanding, effective May 1, 1946.

"Closing of North Toledo Yard seriously affects the agreements referred to above by disrupting agreed to allocation of service between the two Committees at Toledo, Ohio. It is our position that the carrier has not complied with provisions of Section 6 of the Act in failing to serve formal Section 6 Notice of their intention to close North Toledo Yard. Accordingly, we are today filing Form NMB-2 application with your honorable Board to request that status quo provisions of Section 6 be maintained until the controversy has been finally acted upon, as required by Section 5 of the Act."

We are enclosing invention for the service of the National Mediation Board, prepared in duplicate on Form NMB-2, covering dispute between The New York Central Railroad Company, Lines West of Buffalo, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen growing out of letter dated June 7, 1955 sent to local chairmen, representing the B. of L.E.; B. of L.F. & E.; O.R.C. & B.; B. of R.T.; O.R.T.; A.T.D.A.; B. of R.C.; B.R.Y.M. of N.A.; B.R.C. of A.; B.M. of W.E.; and B.R.S.A.; for their information, advising North Toledo Yard would be closed, effective 11:00 P.M., July 10, 1955. Meeting will be held in the Conference Room Central Union Terminal, Toledo, at 9:00 A.M., June 11, 1955, to discuss same.

Service at North Toledo Yard is handled by Michigan Central Railroad and The New York Central, Lines West,

engineers and firemen, as provided by Agreements dated August 3, 1932, supplements by Memorandum of Understanding, effective May 1, 1948, copies attached.

We contend the carrier has not complied with the Railway Labor Act, and letter of June 7, 1955 is not a proper notice under Section 6 of the Act. The closing of North Toledo Yard seriously affects the Agreements referred to above by disrupting agreed upon allocation of service between the Committees representing the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, on the Michigan Central Railroad, and The New York Central Railroad Company, Lines West.

It is requested that the Board assume immediate jurisdiction, and call the Carrier's attention to status quo provisions of Section 6 of the Railway Labor Act.

Very truly yours,

(s) H. E. Gilbert, President, B. of L.F. & E.
(s) Guy L. Brown, Grand Chief Engineer, B. of L.E.

Blind copies to:

Mr. Robert Brown, Jr., Gen. Chmn.,
B. of L.F. & E. N.Y.C.R.R., Lines West
Mr. Z. M. Jones, Gen. Chmn., B. of L.F. & E.
Act. Gen. Chmn. N.Y.C.R.R., Ohio Central Lines
Mr. E. T. Shiplett, Gen. Chmn.,
B. of L.F. & E., Michigan Central R.R.
Mr. S. D. Thompson
A.G.C.E., B. of L.E.
Mr. P. J. Ryan, Gen. Chmn.,
B. of L.E. N.Y.C.R.R., Line West
Mr. J. F. Cone, Gen. Chmn., B. of L.E.
N.Y.C.R.R., Ohio Central Lines
Mr. C. J. Brabenac, Gen. Chmn.,
B. of L.E. Michigan Central R.R.
(Two file copies B.L.F. & E.)
Mr. R. O. Hughes, President, O.R.C. & B.
Mr. W. R. Kennedy, President, B. of R.T.

DEFENDANTS' EXHIBIT D

Form NMB-2

NATIONAL MEDIATION BOARD
APPLICATION FOR MEDIATION SERVICES
(File this Application in Duplicate)

A dispute has arisen between the parties shown below which has not been adjusted between them, and the services of the National Mediation Board under Section 5, First, of the Railway Labor Act, are hereby invoked on the specific question set forth below. The approximate number of employees involved are 350.

The Specific Question in Dispute

Management, The New York Central Railroad Company, Lines West of Buffalo, advised Local Chairmen, representing the B. of L.E., B. of L.F. & E., and various other Organizations of their desire to close North Toledo Yard, effective 11:00 P.M., July 10, 1955; closing this yard seriously affects agreements dated August 3, 1932, and May 1, 1948, by disrupting proper allocation interndivisional service between Michigan Central R.R. and The N.Y.C.R.R. Co., Lines West, as set forth in telegram this date.

Parties to Dispute

The New York Central Railroad Company, Lines West of Buffalo, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen.

Working Agreement

If an agreement governing rates of pay, rules, or working conditions is in effect, give name of parties thereto and date thereof. If there is no such agreement, so state. Agreements effective October 1, 1937, signed by C. F. Wiegele, Genl. Manager, for the Railroad; W. L. Mason, Gen. Chmn., B. of L.E., for engineers; and E. L. Holtcamp, Gen. Chmn., B. of L.F. & E., for Firemen and Hostlers.

Compliance with Railway Labor Act

1. If this dispute involves change in the above mentioned

agreement, attach copy of the 30-day notice served by party desiring change and insert date of notice here. Notice June 7, 1955—Not a proper Section 6 notice.

2. If this dispute involves the negotiations of a new or supplemental agreement, attach copy of request made by party desiring same and insert date of request here.

3. If there has been a refusal to confer, so state and give reason; otherwise, give date of last conference here. Conference has been held; last July 7, 1955.

Signed at Cleveland, Ohio this 8th day of July, 1955.

Name H. E. Gilbert
Title President, B. of L.F. & E.
Name Guy L. Brown
Title Grand Chief Engineer, B. of L.E.

DEFENDANTS' EXHIBIT E

WESTERN UNION

CT WA274 GOVT PD WASHINGTON DC 8 1207PME
H. E. GILBERT, PRESIDENT
BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN
318 KEITH BLDG.
CLEVELAND
WE ARE ADVISED THAT NEW YORK CENTRAL MANAGEMENT PROPOSES TO CLOSE THE NORTH TOLEDO YARD EFFECTIVE 11 PM JULY 10, 1955. BLE AND BLF&E STATE THAT SERVICE AT NORTH TOLEDO YARD AS BETWEEN MICHIGAN CENTRAL AND NEW YORK CENTRAL LINES WEST ENGINEERS IS COVERED BY AGREEMENT DATED AUGUST 3, 1932, SUPPLEMENTED BY MEMORANDUM OF UNDERSTANDING EFFECTIVE MAY 1, 1948 AND THAT CLOSING OF NORTH TOLEDO YARD WOULD SERIOUSLY AFFECT THESE

AGREEMENTS BY DISTURBING AGREED TO ALLOCATIONS OF SERVICE BETWEEN THE TWO COMMITTEES AT TOLEDO, OHIO. ORGANIZATIONS FURTHER CLAIM THAT CARRIER HAS NOT COMPLIED WITH PROVISIONS OF SECTION RAILWAY LABOR ACT. IN FAILING TO SERVE FORMAL SECTION 6 NOTICE OF THEIR INTENTION TO CLOSE NORTH TOLEDO YARD AND HAVE APPLIED FOR BOARD'S MEDIATION SERVICES WITHOUT PASSING ON PROPRIETY OF FORMAL DOCKETING OF SUCH APPLICATIONS, WE HAVE ASSIGNED CORRESPONDENCE FILE C-2386 TO THIS DISPUTE AND BOARD HEREBY REQUESTS CARRIER TO DEFER CONTEMPLATED CLOSING OF NORTH TOLEDO YARD UNTIL MATTER CAN BE DISCUSSED WITH REPRESENTATIVES OF CARRIER AND ORGANIZATIONS BY A BOARD REPRESENTATIVE. PLEASE ACKNOWLEDGE AND ADVISE IF THIS REQUEST WILL BE COMPLIED WITH. JOINT HORNING, BROWN, GILBERT AND KENNEDY BY DIRECTION OF NATIONAL MEDIATON BOARD.

E. C. THOMPSON, SECRETARY
NATIONAL MEDIATION BOARD

DEFENDANTS' EXHIBIT F

WESTERN UNION

CALL
LETTERS FR CHARGE TO BLF&E,
318 Keith Building

AUGUST 4, 1955

E. C. THOMPSON, SECY.
NATIONAL MEDIATION BOARD
WASHINGTON, D. C.

THIS IS TO ADVISE THAT BLF&E AND BRT ARE SETTING STRIKE DATE FOR 6:00 AM EASTERN STANDARD TIME SUNDAY AUGUST 7 1955 NEW YORK CENTRAL WEST ACCOUNT MANAGEMENT ARBITRARILY CLOSING NORTH TOLEDO YARD. BLF&E ALSO SETTING STRIKE DATE FOR SAME TIME ON MICHIGAN CENTRAL. PLEASE ACCEPT THIS WIRE AS USUAL 72 HOUR NOTICE IN CASES OF THIS KIND.

H. E. GILBERT
W. P. KENNEDY

12:10 PM SCP/gr cc: Kennedy, Hampton, Chase

DEFENDANTS' EXHIBIT G

WESTERN UNION

CALL
LETTERS FJR CHARGE TO BLF&E
Cleveland, Ohio

AUGUST 4, 1955

DL
E. C. THOMPSON, SECY.
NATIONAL MEDIATION BOARD
WASHINGTON, D. C.
RETEL DATE CONCERNING STRIKE DATE NEW YORK CENTRAL WEST AND MICHIGAN CENTRAL 6:00 AM AUGUST 7, 1955. AS REQUESTED STRIKE DATE BEING DEFERRED PENDING MEDIATION.

H. E. GILBERT
W. P. KENNEDY

cc: W. P. Kennedy, G. L. Brown, M. W. Hampton, W. E. B. Chase, P. Heath, H. E. Brown, E. T. Shiplett, Z. M. Jones.
SCP:CG4:15 PM

DEFENDANTS' EXHIBIT H

WESTERN UNION

CALL
LETTERS FJR CHARGE TO BLF&E,
FR 318 Keith Bldg., Cleveland, O.

JANUARY 19, 1956

E. C. THOMPSON, SECY.
NATIONAL MEDIATION BOARD
WASHINGTON, D. C.

EMPLOYEES OF NEW YORK CENTRAL LINES WEST AS REPRESENTED BY BROTHERHOOD OF RAILROAD TRAINMEN AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AUTHORIZED TO WITHDRAW FROM SERVICE IN A LEGAL STRIKE EFFECTIVE 11:00 PM EST SATURDAY, JANUARY 21, 1956 ACCOUNT OF NEW YORK CENTRAL'S NOTICE CLOSING NORTH TOLEDO YARD AT THAT TIME.

W. P. KENNEDY
H. E. GILBERT

3:45 PM HLE/gr. cc: W. P. Kennedy—M. W. Hampton
R. E. Brown, GC-NYC(W)

DEFENDANTS' EXHIBIT J

322-37
Detroit, Michigan
August 3, 1932

MEMORANDUM OF AGREEMENT in connection with decision of the Chief Executive Officers of the four transportation organizations — Order of Railway Conductors, Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen & Enginemen — dated August 28, 1931; interpretations thereon by the same four Chief Executive Officers, undat-

ed, and interpretations as covered by Memorandum dated July 30, 193[illegible] submitted by Messrs. O. K. Hedges, Assistant Grand Chief, B. of L.E.; H. M. Van Sant, Vice President, B. of L.F. & E., C. S. Montooth, Vice President, O.R.C.; R. A. Knoff, Vice President, B. of R. T.; in their letter of July 30, 1932 addressed to Messrs. E. Thwaites, Assistant G[illegible]ral Manager, New York Central R.R., and H. L. Margetts, General Superintendent, Michigan Central R.R., and made a part hereof.

IT IS AGREED as follows, effective August 16, 1932:

ITEM 1—

That New York Central and Michigan Central employees be permitted to maintain their identity as employees of their respective companies.

That present and future New York Central and Michigan Central employes on seniority rosters now applying to road and yard service specifically dealt with in this agreement shall be permitted to earn seniority for road and yard service herein dealt with.

ITEM 2—

(a) That all passenger service operating between Toledo and Detroit and Detroit and Toledo, shall be apportioned as follows:

Michigan Central 50%)
New York Central 50%) on a crew basis as heretofore.

ITEM 2—

(b) That all freight service (including assigned and unassigned service) operating between Detroit and Toledo, and Toledo and Detroit, shall be apportioned as follows:

Michigan Central 73%)
New York Central 27%) on a crew basis.

That 50% of the Michigan Central crews assigned to the Jackson-Toledo inter-divisional freight runs shall be counted in the freight service between Detroit and Toledo.

That all extra freight service which may develop through temporary addition of extra crews to the freight pool between Detroit and Toledo, except vacancies, shall be apportioned on the 73-27% basis.

That in the protection of relief work due to lay-offs, during the first 90-day period Michigan Central engineers and firemen will perform the relief work. After the first 90-day period, New York Central engineers and firemen will be furnished to relieve lay-offs of Michigan Central men until the New York Central relief men have worked the same number of turns out of the home terminal for Michigan Central men as Michigan Central men worked relieving New York Central men during the preceding 90-day period, after which New York Central men will return to the New York Central and Michigan Central men will again perform the relief service for a 90-day period, and so on. While New York Central men are doing the relief work, they will run first out on the extra list at Detroit after their rest period is up.

The first New York Central engineer and/or fireman deadheading Toledo to Detroit to perform relief service and the last New York Central engineer and/or fireman returning from Detroit to Toledo after working out the New York Central's quota of relief service will be paid for deadheading. All other deadheading to protect New York Central's quota of men in the freight pool will be without expense to the carriers.

New York Central vacancies for conductors will be filled by the senior New York Central promoted brakeman available with rest up. New York Central vacancies for brakemen will be filled in the same manner as provided for engineers and firemen above.

Detroit shall be the home terminal for New York Central and Michigan Central men in freight service pool between Detroit and Toledo.

ITEM 2—

(c) That all Michigan Central work performed by Michigan Central enginemen within Toledo Terminal be continued to be covered by such employees.

That in the application of the previous paragraph it shall be the endeavor, so far as practical, of the New York Central officials to confine Michigan Central enginemen to former Michigan Central territory and New York Central enginemen to former New York

Central territory, but where the service becomes intermingled, it will be divided between employes of the two railroads involved on an equitable basis to be worked out.

That vacancies due to enginemen laying off, and extra service, will be filled by New York Central enginemen, provided there are no Michigan Central enginemen available at Toledo.

That at the end of each 6-month period the Michigan Central enginemen vacancies filled by New York Central enginemen at Toledo will be checked against the New York Central enginemen vacancies at Detroit filled by Michigan Central enginemen, and enginemen of the railroad short their proper proportion of the work as developed by this check will be permitted to fill regular positions of enginemen of the other road in such yard until they have worked out the balance due them.

The first engineman of either railroad deadheading to work out such shortage and the last engineman of either railroad deadheading after working out such shortage will be compensated for the deadheading. All other deadheading to fill regular jobs at either Toledo or Detroit will be without expense to the carriers.

ITEM 2—

(d) That all New York Central yard work performed by New York Central enginemen within the Detroit Terminal be continued to be covered by such employes.

That in the application of this principle New York Central enginemen are entitled to 4.166% of the total yard engine work in Detroit Terminal, exclusive of engines in passenger yard and tunnel service, with a maximum of five engine crews, unless conditions in the former New York Central territory indicate they are entitled to additional engine crews.

That vacancies due to New York Central enginemen laying off will be filled by Michigan Central enginemen, provided there are no New York Central enginemen available at Detroit.

That this relief service will be equalized as provided in the third paragraph of Item 2(c), and deadheading as per fourth paragraph of Item 2(c).

ITEM 3—

That one New York Central engine crew will be maintained in yard service at Jackson until a check has been made to develop what the proper percentage of work is that New York Central Enginemen are entitled to.

That Michigan Central enginemen at Jackson shall fill vacancies due to New York Central enginemen laying off.

That when check has been made to develop the proportion of work New York Central enginemen are entitled to, the time worked by Michigan Central enginemen in New York Central enginemen vacancies will apply against the Michigan Central enginemen's proportion as developed by such check.

That New York Central enginemen exercising seniority for their proportion of work shall do so without expense to the company.

ITEM 4—

That the Michigan Central be awarded 81.82% and New York Central 18.18% of the yard work at Lansing, Michigan.

That vacancies due to New York Central enginemen in this service laying off will be filled by New York Central enginemen, who will be compensated for deadheading to and from filling such vacancies.

That deadheading in exercise of seniority to fill regular New York Central positions will be without expense to the carrier.

ITEM 5—

That the Michigan Central be awarded 66-2/3% and New York Central 33-1/3% of the yard work at Kalamazoo, Michigan.

Vacancies and deadheading of New York Central enginemen under this Item shall be governed by paragraphs 2 and 3 of Item 4.

ITEM 6—

That the Management is not involved with the Committees concerning the Gale plant at Albion.

ITEM 7—

Subsequent to decision of the Grand Lodge Officers dated August 28, 1931, yard switching crew has been discontinued at Three Rivers.

That in the event there is an inequality in the assignment of crew or crews performing service at Three Rivers, Michigan, it will be a matter for later negotiations between the Management and Committees.

ITEM 8—

That there will be no change in the manner of handling yard work at Ypsilanti.

ITEM 9—

That regarding Michigan Central Wyandotte yard crews performing road service it was developed at the conference that this matter was not handled through the proper channels and it was agreed that it be referred back to the Committees for further handling.

ITEM 10—

That there is nothing between the Management and Committees at the present time concerning former DT&M men.

ITEM 11—

That yard work at Monroe, Michigan, shall be retained by New York Central enginemen except work performed in that yard on Michigan Central tracks, including the Newton Steel plant, which will be checked and properly aportioned between Michigan Central and New York Central enginemen.

That in apportioning the work to conform with the preceding paragraph, the work performed on Michigan Central tracks and in the Newton Steel plant will be treated as Michigan Central work in check to be made to arrive at the proper portion of the work to which Michigan Central enginemen are entitled.

That with respect to Monroe yard crews doing road work, it was developed at conference that this matter had not been handled through proper channels and it is referred back to the Committees for further handling.

ITEM 12—

That Michigan Central enginemen be credited with their proportion of the work on Michigan Central tracks at South Bend, Indiana, ~~on a 50-50~~ basis for all time consumed north of NX Tower; adjustment of crews to be made each 90-day period. Vacancies due to lay-offs of Michigan Central enginemen to be filled

by New York Central enginemen at South Bend, to be equalized each 6 months following Michigan Central's completion of their proportion of the regular assignments.

That deadheading of Michigan Central enginemen to cover regular assignments and returning therefrom will be without expense to the carrier.

GENERAL

All vacancies on regular assignments will be credited to men from the property having jurisdiction over the vacant run or job.

All extra service except vacancies will be apportioned on the same basis as regular assignments.

It is understood that the provisions of the above two paragraphs have been taken care of under each separately numbered item.

That New York Central wage agreements will apply to yard service at Toledo and South Bend and that Michigan Central wage agreements will apply to service at all other points covered by this Memorandum of Agreement.

The foregoing agreement shall remain in effect for a period of 30 days and thereafter subject to 30 days notice in writing by all or any one of the parties signatory hereto.

Agreed to on behalf of all transportation service employees of the New York Central and Michigan Central by:

For the B. of L.E.
(Sgd) O. K. Hedges
Assistant Grand Chief Engineer

For the B. of L.F. & E. and B. of R.T.
(Sgd) H. M. VanSant
Vice President, B. of L.F. & E.

For the O.R.C.
(Sgd) C. S. Montooth
Vice President

Agreed to for the Carriers by:
(Sgd) Henry Shearer
Vice President and General Manager
Michigan Central Railroad
(The N.Y.C.R.R. Co., Lessee)
(Sgd) W. F. Schaaf
General Manager, New York Central Railroad

DEFENDANTS' EXHIBIT K

Memorandum of Understanding in connection with the application of Memorandum of Agreement dated August 3, 1932, between the Carriers and Grand Lodge officers to eliminate the necessity for deadheading and maintaining periodic checks:

It is agreed that:

1. In passenger service on the Toledo Division, New York Central engineers and firemen will man every second assignment.
2. In freight service, New York Central engineers and firemen will man every fourth, seventh, eleventh assignment, etc., as per the attached chart.
3. In Detroit Terminal, New York Central engineers and firemen will man four regular yard assignments, temporary vacancies therein and extra yard assignments to be filled by Michigan Central employees.
4. At North Toledo Yards, Michigan Central engineers and firemen will man all regular yard assignments including the industrial yard jobs, temporary vacancies therein and extra yard assignments at North Toledo Yards to be filled by New York Central employees.
5. At Monroe, New York Central engineers and firemen will man three jobs, vacancies therein and extra assignments at Monroe to be filled by Michigan Central men from the Detroit extra list, the first man down and last man back to be paid for

deadheading between Detroit and Monroe.

6. In road service between Detroit and Toledo, temporary vacancies and extra assignments will be manned by Michigan Central engineers and firemen in lieu of their having equities in three yard assignments at Monroe and in yard service at C. S. Junction, Toledo, and the Michigan Central firemen's equity in relay service at Toledo.

This Memorandum of Understanding will be effective as of May 1, 1948, and thereafter subject to procedures of the Railway Labor Act as amended.

/s/ J. A. Conklin, Gen'l. Chrm., B.L.E., M.C.
/s/ W. L. Mason, Gen'l. Chrm., B.L.E., N.Y.C.
/s/ E. T. Shiplett, Gen'l. Chrm., BLF&E, M.C.
/s/ C. B. Whitlatch, Gen'l. Chrm., BLF&E, N.Y.C.

Detroit, Michigan, April 22, 1948.

/s/ F. McElroy, Gen'l. Mgr., M.C.
/s/ C. F. Wiegele (H) Gen'l. Mgr., N.Y.C.

DEFENDANTS' EXHIBIT L

The New York Central Railroad Company
(Line West of Buffalo)
including Cleveland Union Terminals Company
Except Kankakee and Danville Sub. Divisions
and Ohio Central Division.

REVISED SCHEDULE OF RATES OF PAY,
Effective May 22, 1946
Rules and Working Conditions
for
ENGINEERS AND FIREMEN
Effective October 1, 1937
Superseding Schedule Effective March 1, 1924
RATES OF PAY
for
HOSTLERS AND HOSTLER HELPERS

Effective May 22, 1946
Reprinted April 1947
GENERAL RULES

1—Seniority.

(a) Seniority lists of firemen will be kept posted in round houses and will be corrected every twelve months and a copy of same will be available to all interested chairmen.

(b) (g-1) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note—On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(g-2) Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman out of any terminal on a seniority district while a junior engineer is working on the engineers' extra list or holding an assignment as engineer out of such terminal; it being understood that an engineer cut off the engineers' extra list at any terminal on a seniority district may displace any engineer his junior on that seniority district; it being further understood that engineers will be required to fill all positions of engineers on any seniority district before firemen are promoted, or engineers hired on that seniority district.

Note—On any seniority district where a division of the B. of L. E. and a Lodge of the B. of L. F. & E. desire to put paragraph (g-2) in effect, a referendum vote of the members of all Divisions and Lodges on that seniority district must be taken, and the expense of taking the vote must be borne by each Division and Lodge for voting their members. If a majority of the members of each organization vote in favor of putting paragraph (g-2) in effect, they will notify the General Chairman who will put paragraph (g-2) in effect on that seniority district. When paragraph (g-2) is adopted on a seniority district of a railroad system, it will remain in effect until a majority of the members of either organization on that seniority district decide through a referendum vote, and thirty days' notice has been served on the other organization, to discontinue the rule. After a referendum vote has been taken to discontinue the rule, such thirty days' notice will be served in writing by the General Chairman of the organization desiring the change upon the General Chairman of the other organization. Upon the expiration of such thirty days' notice, or, in case of failure to secure a majority vote by either organization for the adoption of paragraph (g-2) it is understood that paragraph (g-1) is in effect.

2—Examinations—Promotion.

(Effective June 26, 1930).

(a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the firemen's roster, and those passing the required examinations shall be given certificates of qualification and when promoted, shall hold their same relative standing in the service to which assigned.

(c) Where serial examinations are held, the following rules shall apply:

(d) If necessary, two (2) trials may be had on the first and second year's examinations, not to exceed sixty (60) days apart. On the third or final examination, three (3) trials may be had, not less than thirty (30) or more than sixty (60) days apart, a failure to pass this examination to be sufficient cause for dismissal. However, if in the judgment of the employing officer of the company, the applicant is worthy of re-employment, he may be dropped to the foot of the list and enter the service as a new man, except that in the event of reduction in the force, he may be retained as the youngest fireman.

(e) After having passed the final mechanical examination, firemen shall be examined on the rules of the Operating Department covering all phases of engineers service. Failing to pass the first examination, they shall be given a second examination, which shall not be sooner than sixty (60) days after the first examination. A failure to pass this second examination shall be sufficient cause for dismissal. However, if in the judgment of the employing officer of the company the applicant is worthy of employment, he may be dropped to the foot of the list and enter the service as a new man, except in the event of reduction in force he may be retained as the youngest fireman.

(f) Firemen passing the final examination on the second or third trial, as shown in paragraphs (d) or (e), shall not be deprived of their seniority standing by having failed to pass on the previous trials, and their rank as engineer shall be according to their date of employment as fireman; this not to be retroactive.

(g) Firemen who may be incapacitated from taking a final examination as provided in this section, on account of serious injury or illness, shall not lose any seniority standing, provided, that within sixty (60) days from their return to service, upon recovery, they shall notify their superior officer of their readiness to be examined as required and shall successfully pass the examination. In case of neglecting to present themselves as above, a failure shall

be counted against them.

(h) No engineers will be hired so long as there are firemen eligible for promotion.

(i) As soon as a fireman is promoted, he will be notified, in writing by the proper officials of the Company of the date of his promotion and unless he files a written protest within sixty (60) days against such date, he cannot thereafter have it changed. When a date of promotion has been established, such date shall be posted on all bulletin boards of the seniority district on which the man holds rank, and, if not challenged in writing within sixty (60) days after such posting, no protest against such date shall afterwards be heard.

(j) Firemen will not be allowed to waive rights to promotion thus blocking the more desirable jobs of firing with non-promotable men.

3—Mileage Regulations.

(Effective June 26, 1930)

(a) In regular and extra passenger service, a sufficient number of firemen will be assigned to keep the average mileage, or equivalent thereof, between 4000 and 4800 miles per month.

(b) In assigned, pool or chain gang, freight, or other service paying freight rates, a sufficient number of firemen will be assigned to keep the average mileage, or equivalent thereof, between 3200 and 3800 miles per month.

(c) On road extra lists a sufficient number of firemen will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when men are cut off the working list and it is shown that those on the extra list are averaging the equivalent of 3100 miles per month, men will be returned to the extra list if the addition will not reduce the average mileage or equivalent thereof, below 2600 miles per month.

(d) In assigned yard service, regulation will be made by requiring each regularly assigned man to lay off when

he has earned the equivalent of 35 days per month.

(e) In extra yard service, a sufficient number of firemen will be maintained to keep the average earnings between 26 and 35 days per month; provided, when men are cut off the list and it is shown that men are averaging the equivalent of 31 days per month, men will be returned to service, if the addition will not reduce the average earnings below 26 days per month.

(f) In regulating the working lists in the respective classes of service, each list will be handled separately. In the regulation of mileage, neither the minimum nor the maximum is guaranteed, but in applying these mileage regulations efforts will be made, so far as possible, to regulate all passenger service at 4400 miles per month; assigned, pool or chain gang freight, or other service paying freight rates, 3500 miles per month; road extra list, 3100 miles per month; extra yard service, 31 days per month; assigned yard service, not to exceed 35 days per month.

(g) When firemen are laid off on account of reductions in service, they will retain all seniority rights, provided they return to actual service within fifteen (15) days from the date their service was required.

(h) Firemen will not be permitted to exceed the maximum miles as shown, but will be relieved when there are available men.

Firemen taken off to avoid exceeding the maximum will be returned to service in the order in which taken off, when shortage of men requires that such action be taken, or at the beginning of a new regulation period, subject to first-in and first-out rule.

Firemen having less than 100 miles to go to reach their maximum mileage will not be permitted to leave their home terminal if other firemen are available.

Firemen having more than 100 miles to make to reach their maximum will be permitted to leave the home terminal and make another round trip.

Firemen will be relieved only at the home terminal,

to prevent making miles in excess of the maximum, this to avoid gratis deadhead.

(i) The working forces of firemen will not be increased by demotion of engineers when extra engineers are averaging the equivalent of the minimum mileage regulations of extra engineers.

NOTE: If any question arises as to mileage under these rules, mileage of the lists from which men were demoted will be furnished on request.

(j) Register sheets will be provided at each point where registering is required.

At the completion of each trip or day's work, firemen must record on the register sheets the equivalent mileage made since the first of the month.

Firemen failing to register this will be subject to discipline.

(k) Regulation of mileage and checking periods under this rule will be handled between local officials and the Local Chairman of the Brotherhood of Locomotive Firemen and Enginemen in such manner as will permit the requirements of the service to be met.

(l) The foregoing mileage regulations are agreed to with the understanding that they shall not operate to interfere with the satisfactory handling of traffic, or result in additional expense to the company.

4—Extra Service.

Extra passenger, freight and switching firemen will run first-in and first-out in their respective service, seniority to govern in promotions only.

5—Firemen in Through Freight Service, will be Run in Pool System.

A separate pool will be maintained on each division and an extra list on such divisions or at such points as may be deemed necessary. The firemen will be run first-in and first-out under all circumstances, except in case of an accident.

As far as possible, the pool is to be kept equalized at each end of the division, and yard firemen will not be called for road service to avoid deadheading, causing firemen to be bunched and lay over at an unnecessary expense to them.

6—Firemen Assigned to Regular Runs.

All scheduled passenger, freight, work, local, pick-up, and way freight runs will be bulletined for choice when there is a change in time card or when there is a promotion or reduction in the service, which will necessitate displacing the firemen assigned to such runs. All assignments to be completed within five days from date posted.

7—Backing Engines.

The practice of backing engines in road service will be reduced to a minimum and movements of this nature will only be required to the nearest point at which conditions permit turning engine.

8—Cleaning Engines.

Firemen will be relieved of cleaning engines. Lubricators will be filled, headlights, markers and other lamps will be cared for (including filling but not lighting) and all supplies placed on engines at points where round house or shop forces are maintained. The firemen shall not be relieved of the responsibility of knowing that engines for which they are called are properly equipped for service.

9—Two Firemen.

When a second fireman is deemed necessary on any engine, or assistance is deemed necessary on any engine where one fireman is employed, the matter will be taken up with the proper officials by the Firemen's Committee. Failing to reach a settlement the matter shall be referred to an Adjustment Commission, to be composed of five (5) persons, two (2) of whom are to be chosen by the railroad company, two (2) by the Firemen's Committee, and one (1) to be selected by the four (4) thus chosen, who shall be the Chairman of the Commission.

Should the four (4) men fail to agree upon the fifth,

days after the last of the four is selected, the fifth man shall be named by the presiding judge of the United States Commerce Court. If for any reason, the selection of the fifth man can not be made by the Presiding Judge of such Court, he shall be named by the United States District Judge of the District in which the controversy may have arisen. All expenses incurred in connection with the settlement of such matters shall be borne equally by the two (2) parties to the controversy.

10—Rest.

When request is made on arrival firemen who have been on duty ten hours and less than fourteen hours, shall be allowed eight hours undisturbed rest; if on duty fourteen hours or more, ten hours undisturbed rest. It is understood the term "Undisturbed Rest," will be from time fireman registers at terminal until time he is called. If any fireman feels that he needs more rest than herein provided, he may make special arrangements with the engine house foreman.

11—Curtains.

Back curtains will be furnished on all engines throughout the year and side curtains from October 1st to June 1st. All curtains to be of sufficient width and length to afford proper protection.

12—Water Coolers.

The Company will provide suitable water coolers on all engines.

NOTE: Water cans will be furnished and have fireman's name attached to same with the understanding that the fireman will be held responsible for its care.

13—Equipment.

(a) Shovel boards to be kept smooth and free from obstruction and engine and tender decks to be kept leveled.

(b) Engines will be supplied with a seat box of a standard type with spring seat, back rest and arm rest, which shall be kept in good repair. Drop seat lower than

the fireman's seat will be provided in front of the fireman's seat on freight and passenger engines as far as practicable.

(c) Engines will be equipped with storm windows of a uniform standard height also engines will be equipped with sprinklers with six (6) foot hose attached.

(d) Where automatic firedoors are installed they shall be kept in such condition that they will operate automatically and engines will not be sent out of engine terminals with such devices inoperative when it can be avoided.

14—Coaling Engines.

(a) Firemen, who shovel coal on tenders, will receive 35 cents per ton for each ton of coal so handled.

(b) Where only one fireman is employed on an engine in freight service, crews will not be required to run intermediate coaling stations when it is evident that it will necessitate two handlings of coal from tender to fire box before reaching terminal.

(c) Engines will be provided with full tank of coal before leaving engine terminal, and coal will be broken to firing size.

15—Notification of Time Not Allowed and Shortages.

Firemen will be notified in writing when time is not allowed as per trip report and reason stated. Where there is a question as to class of service performed, timekeeper will allow minimum rate to prevent men being short entire day's pay until investigation is complete.

For shortages in excess of $5.00 vouchers will be issued immediately, less than $5.00 to be paid in next regular pay check.

16—Handling Switches.

Firemen will not be required to handle switches where men are provided for that purpose.

17—Relief Firemen.

As far as practicable, relief firemen will not be called

for service other than on trains of their assigned division, except in cases of emergency or for work performed inside of yard limits.

18—Lockers.

Lockers of suitable design and capacity to hold overclothes and personal effects necessary to the trip, will be provided at all terminals.

19—Meals on Wrecker.

A fireman ordered for wrecker will respond in the shortest possible time and wreck masters will see that he is provided with meals in wrecker dining car within a reasonable time and at such time that service will permit his leaving the engine.

20—Flagging.

On light engines making straight-away movements in excess of 25 miles, flagmen will be furnished when available.

21—Switch Engine Assignments.

A correct list of all switch engine assignments, starting and relieving times and points will be posted at all registering places.

22—Calling Time and Right to Runs.

Firemen will not be called an unreasonable length of time before required to report.

The time firemen are required to report for duty will be the time which shall determine a fireman's right to a run, not the leaving time of the train.

It is understood the oldest freight firemen available will be used to cover extra passenger runs when there are no extra passenger firemen available.

23—Straight Seniority for Firemen.

After three years firing service, firemen will be allowed to take any run or job as firemen to which their seniority entitles them; change to be made at customary assignment period only; this not to restore rights of firemen who have already waived same.

24—Rulings: How Handled.

Whenever in the judgment of either party to this agreement it is desirable to make changes in the application of the schedule rules, or in the recognized interpretation of such schedule rules, no such changes shall be made effective until sufficient advance notice of such change shall have been served on the other party as will permit of proper consideration of the proposed change and opportunity for joint discussion given.

25—Local Agreements.

Where local conditions are such that the provisions of this schedule evidently work a hardship on the firemen or the company at that point, the local committee working in conjunction with the General Chairman, will be permitted to agree with the officials on the rules to cover the conditions, such rules to be binding at that particular point.

26—Awarded Rules.

Subjects in this schedule that are based on the following Awards: Firemen's Award of May 3rd, 1913; Award of the Council of National Defense of March 19th, 1917; and General Order No. 27 and supplements thereto; not specifically modified herein are subject to such interpretations as have been placed on them by the several arbitrators or referees and their decisions shall cover these rules as far as applicable.

27—Misinterpretation of Rules.

Nothing in this schedule shall justify a fireman in refusing to perform any duty required of him by an authorized employee. This not to be interpreted to mean authority to such authorized employee to violate schedule rules. In case of any such violation, a fireman, who suffers in loss of earnings shall be reimbursed accordingly, but in his case must be handled in the regular manner.

28—Duration of Agreement.

The foregoing rules and regulations are effective October 1, 1937, and constitute an agreement between the New York Central R. R. West, and the firemen employed

by the above corporation and it is hereby agreed between the parties to the agreement that this schedule shall remain in full force and effect and equally binding on both parties hereto until such time as one or the other of the parties shall serve thirty (30) days notice upon the other party that they are desirous of amending or bringing to a termination a part or all of this contract, and no change shall be made pending the completion of the necessary negotiations.

Shop Yard Engines.

UNITED STATES RAILROAD ADMINISTRATION

Washington, Oct. 24, 1919.

Supplement No. 23 to General Order No. 27.

(a) Effective October 1, 1919, employees (excluding locomotive crane operators and wrecking derrick engineers) who are assigned to operate shop-yard engines will be paid the yard rates of wages and operated under the yard-service rules as are specified in Supplements No. 15 (engineers and firemen) and 16 (yardmen) to General Order No. 27, and such service shall be incorporated into the respective agreements on all roads in Federal Operation.

(b) This order is without prejudice to the seniority rights of employees who are now assigned to shop-yard engines. Only as vacancies occur and new positions are created they will be filled from the seniority rosters of the engineers, firemen and yardmen.

(c) Rates of wages that are higher or rules for overtime that are more favorable to the employees than those hereby established shall be preserved.

WALKER D. HINES,
Director General of Railroads

.....

For the Employees
E. L. HOLTCAMP,
General Chairman
B. L. F. & E.

For the [illegible]
C. F. [illegible]
General [illegible]

DEFENDANTS' EXHIBIT M

Form NMB-2

NATIONAL MEDIATION BOARD
APPLICATION FOR MEDIATION SERVICES
(File this Application in Duplicate)

A dispute has arisen between the parties shown below which has not been adjusted between them, and the services of the National Mediation Board under Section 5, First, of the Railway Labor Act are hereby invoked on the specific question set forth below. The approximate number of employees involved are 1000.

The Specific Question in Dispute

Management arbitrarily closing North Toledo Yard, without negotiations.

Parties to Dispute

New York Central Railroad Company—Lines West—
Brotherhood of Railroad Trainmen

Working Agreement

If an agreement governing rates of pay, rules, or working conditions is in effect, give name of parties thereto and date thereof. If there is no such agreement, so state, New York Central — Lines West — Brotherhood of Railroad Trainmen — August 15, 1942.

Compliance with Railway Labor Act

1. If this dispute involves change in the above mentioned agreement, attach copy of the 30-day notice served by party desiring change and insert date of notice here.....
.....

2. If this dispute involves the negotiations of a new or supplemental agreement, attach copy of request made by party desiring same and insert date of request here.....
.....

3. If there has been a refusal to confer, so state and give reason; otherwise, give date of last conference here. July 7, 1955.

Signed at Cleveland, Ohio, this 7th day of July, 1955.

Name .....
Title .....
Name .....
Title President, Brotherhood of Railroad Trainmen

DEFENDANTS' EXHIBIT N

The New York Central
Railroad Company
(Line West of Buffalo)
AGREEMENT
with the
BROTHERHOOD
OF RAILROAD TRAINMEN
Governing Yardmen and Switchtenders Employed in all Yards Outside The Chicago Switching District Except Ohio Central Yards
Effective August 15, 1942

The provisions of Decision No. 1 of the Commission of Eight and supplements thereto and/or the provisions of General Order No. 27 and its supplements, together with the interpretations thereon which were made by the said Commission or by the United States Railroad Administration are in effect unless specifically changed by the provisions of this agreement.

THE NEW YORK CENTRAL
RAILROAD COMPANY
(Line West of Buffalo)

Agreement between the New York Central Railroad Line West of Buffalo, and the Brotherhood of Railroad Trainmen governing yardmen and switchtenders employed in all yards outside the Chicago Switching District except Ohio Central yards, effective August 15, 1942.

The provisions of Decision No. 1 of the Commission of Eight and supplements thereto and/or the provisions of

General Order No. 27 and its supplements, together with the interpretations thereon which were made by the said Commission or by the United States Railroad Administration are in effect unless specifically changed by the provisions of this agreement.

It is further understood that if and when a car retarder system is put in service in any yard covered by this agreement, negotiations will be had by the parties hereto for the purpose of establishing appropriate working conditions for Car Retarder Operators.

ARTICLE 1

Rates of Pay

	Per Day	Per Hr.	Overtime Rates Per Hr.
(a) Switchtenders	$6.27	$ .785	$1.175
Helpers	7.82	.975	1.465
Foremen	8.34	1.045	1.565
Car Retarder Operator	9.14	1.145	1.715

Definition of Yard Work

(b) Switching of any kind, including transfer or puller service, performed exclusively within switching limits, shall be considered yard work and performed by yardmen.

Work, construction or pilot service when confined to work entirely within switching limits, shall be performed by yardmen.

(c) Present practices in regard to character of work permissible or duties required of road crews at terminals will not be extended.

ARTICLE 11

Seniority

(a) Yardmen shall hold no rights in road service, nor shall road men hold any rights in yard service.

(b) Seniority rights of all yardmen and switchtenders shall date from the day they enter the service as such. Switchtenders desiring to enter switching service shall be

given preference in the order of their seniority as switchtenders and if they can qualify shall be assigned to the bottom of the yardmen's list in the order their names now appear on the switchtenders' roster.

(c) The oldest yardman or switchtender in point of service, if competent, shall have preference in their respective positions.

(d) In the event of re-arrangement of assignments, such as starting time, place for going on or off duty, changes in character of service of individual assignments, or establishment of new service, yardmen and switchtenders will have the privilege of taking any assignment to which their seniority entitles them. Such voluntary exercise of seniority rights shall be subject to local understandings.

Rosters

(e) Correct seniority rosters of yardmen and switchtenders separately shall be furnished the Local Chairman and shall also be posted in convenient places in yard offices to which yardmen and switchtenders shall have access at all times. These rosters shall be revised during the first ten days of January, April, July and October and in addition the Local Chairman will be furnished monthly with a list showing all names added or removed from the roster during the preceding thirty (30) days with the reason for such removal and a list showing names of employees on leave of absence for thiry (30) days or over.

Appointment of Yardmasters

(f) When it is necessary to increase the list of yardmasters or assistant yardmasters, the senior qualified applicant subject to this agreement will be given first consideration.

Register Sheets

(g) Register sheets shall be kept in each crew dispatcher's office upon which assigned crews, switchtenders and extra men shall be registered.

Rotary Extra Board

(h) Where mutually agreeable to local officers and

committee, rotary boards for extra men may be established subject to approval of the Superintendent and General Chairman.

DEFENDANTS' EXHIBIT O

Air Line Junction
January 18, 1956

ALL YARDMEN & ENGINEMEN
TOLEDO TERRITORY

After completion of the day's work on Friday, January 20, 1956, BUM No. 5, second trick, will be discontinued.

After completion of work on first trick, Saturday, January 21, 1956, BUM No. 5, first trick will be discontinued.

After completion of the second trick at North Toledo Yard on January 21, 1956, NORTH TOLEDO NO. 1 job on all three tricks will be discontinued.

R. W. Fuller

RWF/gw
cy:

J. P. Kiefer
C. M. Finigan
Engine Dispatchers
R. L. Johnson
L. G. Crippen
M. D. Sample
W. F. Snell, Jr.
W. A. Shea
W. G. Chase
K. Valenly
L. J. Collins
Yard Crew Dispatchers

DEFENDANTS' EXHIBIT P

WESTERN UNION

FSW FR CLEVELAND, OHIO
JULY 8, 1955

E. C. THOMPSON, SECRETARY
NATIONAL MEDIATION BOARD
WASHINGTON, D. C.

REURTEL AGREEABLE TO COMPLYING WITH BOARD'S REQUEST IN DEALING WITH DISPUTE THE PROPOSAL OF NEW YORK CENTRAL MANAGEMENT TO CLOSE NORTH TOLEDO YARD.

W. P. KENNEDY
BROTHERHOOD OF RAILROAD TRAINMEN
JD-mg
cc: Guy L. Brown, H. E. Gilbert, E. G. Burkley, F. A. Collin, W. E. Atkinson, L. J. Collins

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DEFENDANTS' EXHIBIT Q

WESTERN UNION

CALL LETTERS FSW CHARGE TO BROTHERHOOD OF RAILROAD TRAINMEN
FR CLEVELAND, OHIO
AUGUST 5, 1955

W. E. B. CHASE
12051 CHERRYLAWN ST.
DETROIT, MICHIGAN

SECRETARY THOMPSON ADVISES NATIONAL MEDIATION BOARD HAS TAKEN JURISDICTION OVER DISPUTE INVOLVING NEW YORK CENTRAL MANAGEMENT ARBITRARILY CLOSING NORTH TOLEDO YARD. ARRANGE TO POSTPONE STRIKE

DATE PENDING MEDIATION PROCEEDINGS.

W. P. KENNEDY

JD-mg

SPECIAL 12689

cc: Guy L. Brown, H. E. Gilbert, E. G. Burkley, F. A. Collin, L. J. Collins—907

DEFENDANTS' EXHIBIT B

THE NEW YORK CENTRAL SYSTEM

Minutes of Meeting set up in connection with the closing of North Toledo Yard, as outlined in W. A. Shea's letter of June 7th to the various local Chairmen.

The meeting was called to order 9:10 A. M. June 11th by Mr. Shea, who acted as Chairman.

There were in attendance the following—

Name	*Title*	*Organization*
W. C. Grove,	Local Chairman,	Carmen
A. P. Manthey,	Local Committee 95,	B. of R. C.
E. G. Jenssen,	Local Committee 95,	B. of R. C.
F. J. Knack,	Local Committee 1189,	B. of R. C.
M. E. McCloskey,	Member No. 508,	B. of L. F. & E.
Fred Scaresbrick,	Local Committee 1189,	B. of R. C.
V. C. Seethaler,	Committee 907,	B. of R. T.
R. E. Swert,	Local Chairman 397,	B. of R. T.
L. J. Collins,	Local Chairman 907,	B. of R. T.
W. A. Prior,	Local Committee 907,	B. of R. T.
R. M. Carver,	General Foreman,	N. Y. C. R. R.
R. G. Rowles,	Asst. Master Mechanic,	N. Y. C. R. R.
C. A. Guhl,	General Foreman,	N. Y. C. R. R.
Z. M. Jones,	General Chairman,	B. of L. F. & E. (OC)
F. R. Kitzler,	Local Chairman 106,	B. of L. F. & E.
G. B. Henney,	Local Chairman 876,	B. of L. E.
J. F. Cone,	General Chairman,	B. of L. E. (OC)
H. M. Washer,	General Chairman,	B.R.Y.M.N.A. Inc.

L. J. Coehre, Local Chairman, B.R.Y.M.A.
W. R. Frederick, Local Chairman, B. B. B. of A.
Nick Tedoroff, Local Chairman, B. M. of W.
C. H. Miley, Local Chairman, B. of R. T.
W. E. Atkinson, General Chairman, B. of R. T. (OC)
L. A. Mortimore, Committee 457, B. of L. E.
B. L. Johnson, Local Chairman 457, B. of L. E.
M. L. Larrelere, Vice Chairman No. 2, B. of L. F. & E.
L. G. Crippen, Local Chairman No. 2, B. of L. F. & E.
A. J. Young, Local Chairman 502, B. of L. F. & E.
M. W. Hayek, Local Chairman No. 1, B. of L. E. (Detroit)
R. C. Smith, Local Chairman Div 394, O.R.C. & B. (Detroit)
T. C. Rich, Local Chairman Div 26, O.R.C. & B. (Toledo)
F. A. Collin, General Chairman, B. of R. T. (Detroit)
H. M. McKenna, Local Chairman, B. of R. T. (Detroit)
S. L. Burden, Trainmaster, N.Y.C.R.R.
R. W. Fuller, Trainmaster, N.Y.C.R.R.
F. B. Gill, Asst. Supt., N.Y.C.R.R
G. L. Fredrich, Chief Clerk, N.Y.C.R.R.
Loretta Louy, Stenographer, N.Y.C.R.R.
W. A. Shea, Superintendent, N.Y.C.R.R.

The Chairman opened the meeting by stating that it had been called to his attention that Mr. Rich, Local Chairman for the Order of Railroad Conductors and Brakemen had not received copy of the notice of the meeting or the notice of closing North Toledo Yard. The Chairman explained to Mr. Rich and all others that it was not intentional in omitting Mr. Rich's name and that if we had overlooked anyone else we apologize.

The Chairman explained to the assembly what we had in mind for handling the business when North Toledo, or the Northbound Yard, was closed. It was explained that the cars being delivered to North Toledo Yard by the foreign roads at this time would be delivered by the foreign roads to Stanley Yard. It was also explained that the cars being hauled from Air Line to North Toledo would be handled from Air Line yard, normally through the Detroit Yard.

The Chairman also explained that PD-1 would be reinstated and that either it would handle cars from Stanley and pick up at Air Line, or that it would come light from Stanley and pick up at Air Line. The Chairman also informed them that we contemplated stopping TB-10, TL-2, TJ-2, and the Michigan Central local to pick up cars at Air Line. He also explained that in all cases the trains would be started out of Stanley Yard. The Chairman then asked if there were any questions:

Mr. Atkinson then asked if he would be furnished a record of how the work would be done. The Chairman told him that minutes would be furnished of this meeting.

Mr. Mortimore got up and questioned as to how we would pick up at Detroit Yard, due to the fact that Nebraska Avenue would have to be blocked by any pickup and that when they went by the home signal the gates would go down and the curves there were very hard to see around. The Chairman told him this matter would be taken care of and looked into.

Mr. Crippen asked if it was our intention to arbitrarily have the Michigan Central pick up in Detroit Yard. He further stated that he understood the Adjustment Board was handling switchmen claims protesting the Michigan Central picking up in Detroit Yard, and he wished to protest the Michigan Central picking up in Detroit Yard in accordance with the outline of what we intend to do.

Mr. Johnson got on his feet and said he wanted to make the same protest as Mr. Crippen.

Mr. Atkinson then asked if it was our intention to arbitrarily set aside agreement with the New York Central and O.C. He also stated he was concerned if we were to use road crews to perform puller service. The Chairman told Mr. Atkinson that it was not our intention to perform puller service with road crews or to set aside any agreement between the New York Central and O.C.

Mr. Hayek asked if we closed the northbound yard if we

were going to make any movements through that yard on and off the Toledo Terminal Railroad. He was told that we would not make any movements as the tracks would be torn up through North Toledo Yard.

Mr. Mortimore then brought up the question of a signal at East Toledo and he was asked if this was important to this meeting, whereupon Mr. Burden stated that Mr. Mortimore had talked to him about this matter and he was getting into it, and we will let Mr. Mortimore know later on the result of this study.

Mr. Johnson asked if it was his understanding the various roads delivering to North Toledo are going to deliver to Air Line Junction. Chairman told Mr. Johnson that this was not the case; that the foreign roads delivering to North Toledo would deliver at Stanley Yard. Mr. Johnson further asked if Bum 5 would be eliminated. He was told if there is no work for Bum 5 it will be eliminated. Mr. Johnson then asked if it would make any change in the puller Air Line to Stanley and he was told that it was not contemplated removing any of the pullers outside of the puller Air Line to North Toledo.

Mr. Crippen then got up and asked if the Lodge at Elkhart had been notified of this meeting. Mr. Crippen was told that to the best of our knowledge it had been. However, as stated at the start of the meeting, we had overlooked notifying Mr. Rich, and apologize if we had overlooked anyone. On returning to the office this matter was checked and it was found that Local Chairman Sample was not given a copy of our letter of June 7th. However, copy of these minutes and a copy of our letter June 7th will be sent to Mr. Sample with our apologies.

Mr. Prior asked if in the elimination of North Toledo what did we intend to do with the jobs and employes at North Toledo and also Bum 5. He was told that if we had no work for Bum 5 it would be taken off; also that the employes presently employed at North Toledo, with the exception of

the car repairmen, could exercise their seniority to take other jobs. Mr. Prior was also told that the car repairmen's seniority was exclusive at North Toledo but that it was our understanding Mr. Rowles is making some arrangement to take care of that force.

Mr. L. J. Collins then held the floor and stated that he was protesting the fact that by the proposed arrangement we were in violation of the following—

> "Effective Feb. 11, 1932, the M.C. North Toledo Yards were discontinued and facilities were coordinated with Stanley yard.
> Bum No. 5 agreement 1935.
> Tail-ending Agreement, Sept. 15, 1937.
> 3-D Agreement Aug. 30, 1950.
> These agreements specify where trains are to be operated within terminal limits and is in violation of Article I (B) and (C). Further, in each of these agreements, if either party desires to revise, modify or abrogate, thirty days written advance notice containing changes are reasons for abrogation shall be given. Violation of Section 6, Railway Labor Act.
> It is our position that this arrangement cannot be changed except by process of negotiation and agreement between the parties."

Mr. Mortimore than asked if it is understood that all trains except MC-2 would pick up in Detroit Yard. The Chairman told Mr. Mortimore that we did at this time contemplate TB-2, TJ-2, TL-2, PD-1 and the MC local picking up at Detroit yard. He then asked if we intended to reestablish PD-1 and he was told by the Chairman that that is the case and that it would be run as a light section or a train out of Stanley to pick up.

Mr. F. A. Collin then stated that the usual practice was to have pickup made by PD-1—not any other trains—only the one train. Chairman told Mr. Collin that we had discontinued PD-1 picking up about a year ago but we have had PD-1 running combined with PC-1 on the Toledo Division, and that when it had run over the Detroit Branch it did

pick up cars for Detroit at Air Line Junction yard, and apparently was the only train that did make a pickup.

Mr. Prior then asked what our intentions were in connection with handling the MC industry and whether or not they were to be affected. The Chairman told Mr. Prior that no change was contemplated other than the MC industry would not have to go to North Toledo or the Northbound Yard.

Mr. Washer asked when the North Toledo Yard was to be abandoned and when the tracks would be taken up; also whether or not we would leave the Yardmasters on to handle work trains that might be involved in the removal of the tracks. The Chairman told Mr. Washer that we did not know just how soon we could remove the tracks but we thought that the Yardmasters would have to be dispensed with at the time of the closing of the yard, which is slated for July 10th.

Mr. Johnson then asked "Is Bum 5 to be left on and deliver cars from Air Line to Stanley Yard the cars that we are contemplating putting in PD-1"? He was told that this was not contemplated; we will not put any job on that is not necessary. Mr. Johnson then said that we are contemplating 6 or 7 runs that could pick up in Detroit Yard and he understood that the M.C. was limited on the number of trains that could pick up in Air Line Yard, and stated he thought it was limited to PD-1 and that the pickup formerly handled on this train was a subject of protest before the Labor Board at this time. Mr. Johnson was told that we contemplate picking up with the trains we had previously mentioned and that we were familiar with the protest before the Labor Board.

Mr. L. J. Collins then stated "we have stopped them and no pickups have been made or mentioned until this meeting." He mentioned at this point agreements without negotiation and that the closing of North Toledo Yard was clearly out of line; and further stated that we will do away

with 5 crews for which no provision had been made as to their working.

Mr. F. A. Collin then stated that he understood we felt that certain trains could make pickup in Detroit Yard, stating TB-10 and TL-2. He then called attention that NYC-MC agreements, paragraph 18-M, specifies just where cars could be picked up and Detroit Yard was not mentioned therein, and if we picked up at Detroit Yard we would be setting ourselves up for penalty claims and he stated he would have to protect their men. The Chairman called Mr. Collin's attention to the fact that possibly the agreement does not mention Detroit Yard but the agreement does mention Air Line for picking up and Detroit Yard is a part thereof. Mr. Collin then stated that some time back claims had been paid for MC crews going into Panama Yard.

Mr. L. J. Collins then asked "Is this a further extension of terminals" and whether or not it was a coordination of facilities. The Chairman's answer was that we felt we had a right to abolish any yard that we did not need and that it was a coordination or a consolidation of facilities. Mr. Collins then asked how many cars were handled at North Toledo; the answer was 400 on an average but varying from 215 to 450. Mr. Collins then asked if the closing of this yard was for taxation purposes. The Chairman told him that he did not know what the taxes were on this yard but that it was an economy move and that we felt we had our yards spread out too much. He asked further if we felt that the classifications could be handled at Stanley without a decrease in business. To this we stated that we thought it could be. Mr. Collins then stated that his organization was responsible for furnishing the men and that he thought it was an imposition, stating as an example that possibly at Air Line Junction, where we have 70 jobs now that we would have to decrease the jobs by 5, and this would mean, of course, men being laid off. The Chairman

told him that we fully appreciated that he had an obligation to the men, but that if business kept up as it has we felt that possibly no men would have to be laid off, but that some of the men would not be doing so much doubling.

Mr. Hayek brought up the question as to whether or not the average number of cars handled was an average per day or per week, but we stated it was an average per day; and at this point Trainmaster Burden called the Chairman's attention to the fact that we averaged in May 1955—390 cars handled in North Toledo Yard. This information was given to the assembly.

Mr. L. J. Collins then asked about the cost per car handled in North Toledo Yard and asked us to compare it with Stanley Yard. The Chairman told Mr. Collins he was not going to enter into any discussion in the comparison of car cost; that there was no comparison between the work at North Toledo and Stanley, at North Toledo and Air Line Junction, at Stanley and Air Line Junction, and that Air Line has many industrial runs, Stanley has many coal runs and North Toledo has nothing but yard switching.

Mr. Mortimore asked what percentage of the North Toledo cars are being taken from Air Line Junction and we answered about 120 cars. He then asked if Bum 5 handle 120 cars and he was told that the cars handled was an average and that sometimes we made one run and sometimes two or three runs with Bum 5, and it has been known to handle quite a lot more and also quite a lot less in one day.

Mr. Hayek asked if southbound movements would be affected and he was told by the Chairman that they would not be involved. He asked if there was any car movement between Air Line and the Northbound yard in southbound movement. Chairman told Mr. Hayek that it did not average only a few cars a day and with the northbound yard closed we felt there would be no movement. Mr. Hayek then asked if any provision had been made to provide work for

the crews involved in the closing of North Toledo Yard. The Chairman told him none other than what their seniority would entitle them to.

Mr. L. J. Collins then stated they had an agreement made with the Michigan Central effective April 15, 1938, revised March 1, 1947, and he read statement of the writeup sent to the National Railroad Adjustment Board in connection with the Air Line Junction yardmen's protest for the MC crews picking up PD-1. Mr. Collins then stated he thought the agreement was made in good faith and the carrier is ignoring parts of it; and he stated again that his contention was that we are violating our agreements by the abolishment of North Toledo Yard.

Mr. Knack stated they had five or six clerks at North Toledo and would the five or six be taken off by going back to Stanley with the work. The Chairman told him we had not contemplated our needs at Stanley but felt that perhaps some jobs would be created at that point and the men would, of course, be entitled to exercise their seniority. There was no promise made as to any jobs being put on at Stanley Yard.

Mr. Hayek then brought up question that we were referring to North Toledo Yard and he asked if that was what is commonly called the Northbound Yard for the Michigan Central crews. We stated that it was one and the same; the yard we were talking about was the yard located between Hallett and Vienna Junction. Mr. Hayek further stated that the agreement states this location is called the Northbound Yard and that the old Stickney Avenue Yard was North Toledo Yard. The Chairman told Mr. Hayek that the Stickney Avenue Yard had just about been abolished and that we were talking about the Northbound Yard in this discussion and when North Toledo Yard was mentioned it was the socalled Northbound Yard.

Mr. Scaresbrick then asked where the foreign roads were going to deliver the cars that are now being delivered to

North Toledo. The answer to this was that delivery would be made in Stanley Yard and that all interchange work would be handled at that point.

Mr. Atkinson then asked if we were contemplating running foreign line pullers into Stanley and he was told that was so. He then asked if we were going to let the foreign lines pull from Stanley and we told him that that was not our intention. He asked if we contemplated the W&LE crews to run into Stanley and we told him that they would. He further asked what affect this would have on the dock business and the answer was "none whatever". Mr. Atkinson was also told that the cars to be handled by the W&LE into Stanley would be limited to the cars that are now interchanged at North Toledo.

At this point the Chairman read to all those present the letter that was written to the foreign roads under date of June 7th and this is quoted as below:—

> "In accordance with conversations with you and Mr. Shelton; we are contemplating closing our North Toledo Yard at 11:59 p. m. July 9, 1955.
> All cars formerly interchanged to us in North Toledo Yard will be interchanged with us at Stanley Yard.
> Will you please be governed accordingly."

Mr. Atkinson then asked whether the O.&C. would deliver traffic from Stanley to foreign lines and the answer to this was "there would be no change in this."

The Chairman then asked if there were any more questions and as there were no further questions brought up the meeting was adjourned at 10:30 a. m.

DEFENDANTS' EXHIBIT S

NEW YORK CENTRAL SYSTEM

Cleveland, Ohio, July 11, 1955.

Minutes of Meeting held in Room 22, 1324 West 3rd Street, Cleveland, Ohio, in connection with the proposed closing of

North Toledo Yard, Toledo, Oh!
The following were present at 10:00 A.M. DST, July 7th, 1955:
Messrs:
(CHAIRMAN)

G. W. Maxwell, General Superintendent—NYCRR, Cleveland, O.
E. H. O'Keefe, General Superintendent—MC RR, Detroit, Mich.
V. E. Peterson, AGM-Labor Relations—NYCRR, Cleveland, O.
A. T. Van Wart, AGM-Labor Relations—MC RR, Detroit, Mich.
W. A. Sprunk, Asst. to Gen. Supt.—NYCRR, Cleveland, O.
W. A. Shea, Superintendent—NYCRR, Toledo, O.
P. J. Ryan, Gen. Chm. BofLE, NYC—West, Oak Lawn, Ill.
C. J. Brabenac, Gen. Chm. BofLE, Detroit, Mich.
J. F. Cone, Gen. Chm. BofLE—OC Lines, Toledo, Ohio
N. R. Nelson, Gen. Chm. ORC—OC Lines, Columbus, O.
L. E. Gerard, Gen. Chm. ORC—NYC—West, Hamburg, N.Y.
Z. M. Jones, Gen. Chm. BofLF&E, Columbus, O.
E. T. Shiplett, Gen. Chm. BofLF&E, Detroit, Mich.
W. E. Atkinson, Gen. Chm. BofRT—OC Lines, Columbus, O.
E. G. Burkley, Acting Gen. Chm. BofRT—West, Cleveland, O.
F. C. Montgomery, Sec'y BofRT—Line West, Cleveland, O.
R. L. Johnson, Local Chm. BofLE, NYC West, Toledo, O.
Glenn B. Henney, Local Chm. BofLE, Toledo, O.
F. R. Kitzler, Local Chm. BofLF&E, Toledo, O.

A. J. Young, Local Chm. BofLF&E, Detroit, Mich.
R. E. Swert, Local Chm. BofRT, Toledo, O.
L. J. Collins, Local Chm. BofRT, Toledo, O.

It was understood from Mr. Ryan, General Chairman, BofLE—Line West, that he had been authorized to act for the BofLF&E—Line West, in the absence of Local Chairman L. J. Crippen, BofLF&E—Toledo, who had been designated by General Chairman Brown, BofLF&E—Line West, to act in his behalf at this meeting.

Meeting was opened by CHAIRMAN stating that this gathering had been called to discuss the closing of North Toledo Yard, Toledo, Ohio; 11:00 P.M., July 10, 1955. It was understood by all concerned that there would be no stenographer in attendance but that the CHAIRMAN would prepare the minutes based on his notes and give copies to all concerned.

The CHAIRMAN explained that the railroads in the Toledo area formerly delivering their northbound business to North Toledo had been instructed to deliver such business to Stanley Yard coincident with the closing of North Toledo Yard; this meant that the C&O Ry., B&O RR, PRR, Toledo Terminal RR and Nickel Plate Road, including the Clover Leaf and W&LE Districts, were now called upon to deliver their northbound business to Stanley Yard. The CHAIRMAN also explained that it was the intention to make six classifications at present at Air Line Junction for the Michigan Central, which would be—Lansing, Jackson and West, Monroe, Trenton - Wyandotte, Rouge and PD-1. It was the intention that train PD-1 would be restored, operating from Youngstown, Ohio at 5:00 A.M. daily, to Detroit, Michigan. This train would operate from Youngstown to Elyria with an LE&P crew and be handled west from Elyria by a Toledo Division—East crew, which would take the Detroit City cars from Collinwood Yards and pick up train at Elyria, then proceeding to Air Line Junction where the PD-1 cars switched

at that point would be added to the train and a Michigan Central road crew would be ordered from Stanley to pick up PD-1's entire train at Air Line Junction and proceed directly to the Michigan Central without further stopping or switching in the Toledo Terminal area, being due to arrive Detroit at 9:00 P.M. Trains TL-2, TJ-2, TB-10, MC Local would also stop at Air Line Junction to pick up and then move directly to the Michigan Central in road movement. Trains MC-2 and MC-8 would not stop at Air Line Junction as a general practice.

The CHAIRMAN also explained that all employees affected by the closing of North Toledo Yard had seniority rights which could be exercised for displacement purposes. The only exception to this was employees represented by the Brotherhood of Railway Carmen, who had joint seniority at North Toledo and whose seniority rights at North Toledo would be dovetailed in with the Air Line Junction Carmen. This handling of Railway Carmen, it was explained, was being handled by the Equipment Department and did not enter into this particular meeting.

GENERAL CHAIRMAN ATKINSON asked if we were willing to furnish information to the effect that those employees affected by the closing of North Toledo Yard would be handled under the terms of the Burlington Agreement. It was explained by the CHAIRMAN that inasmuch as employees affected held seniority rights which they could exercise, that we did not feel that the Burlington Agreement applied in this case.

GENERAL CHAIRMAN ATKINSON then asked if all employees affected by the closing of North Toledo Yard would be fully informed of our intentions and he was assured that they would be, furnishing copies of the minutes of this meeting to all those desiring same.

LOCAL CHAIRMAN COLLINS then asked if this closing of the North Toledo Yard was intended as an economy measure. The CHAIRMAN explained that undoubt-

edly certain economies would be effected by the closing, but that the primary reason for such closing was to improve the service on northbound traffic through the Toledo area and that this was the first consideration.

LOCAL CHAIRMAN COLLINS then asked if this entire matter was a consolidation of yards at Toledo. The CHAIRMAN explained that this was not a consolidation of yards at Toledo, but was a redesignation of interchange points and a yard closing only.

GENERAL CHAIRMAN SHIPLETT asked how many crews we now have working at North Toledo Yard and the CHAIRMAN explained that there were three tricks regularly assigned, one crew on each trick, and that when necessary, extra yard crews were called. GENERAL CHAIRMAN SHIPLETT then asked if it was the intention to disturb the Wagon Works jobs. The CHAIRMAN explained that we did not anticipate any changes in the industrial work in the vicinity of North Toledo, and that the Wagon Works jobs would not be changed, the only job directly affected being the Bum No. 5 puller operating from Air Line Junction to North Toledo, and the regular engine working at North Toledo Yard.

LOCAL CHAIRMAN COLLINS then stated that Management was arbitrarily not recognizing the Bum No. 5 Agreement, dated October 1, 1935. The CHAIRMAN explained that we were not "arbitrarily" ignoring any agreement, but that the so-called Bum No. 5 Agreement said that cars would be handled from Air Line Junction to North Toledo Yard by the Bum No. 5 job (among other duties), and that in this case there had been a redesignation of interchange points and that we felt it was proper for Michigan Central road crews to pick up at Air Line Junction and move directly to the Michigan Central without further intermediate movement.

LOCAL CHAIRMAN SWERT then stated that there had been an understanding with Mr. Riefel that Michigan

Central road crews would not pick up at Air Line Junction northbound. CHAIRMAN mentioned that there was no evidence of such an understanding in our papers and that the same contention had been made in the PD-1 case, but no definite understanding was ever produced to support it. The only mention made in the so-called Item No. 5 Agreement was that Michigan Central northbound trains for a short period after 1932 had stopped at Air Line Junction and Michigan Central cars picked up, but it was not stated in the Agreement as to why this was changed and from everything we could determine, change was made for operating reasons. ACTING GENERAL CHAIRMAN BURKLEY then remarked that the BofRT would be violating their submission in the PD-1 case if they agreed now to permit Michigan Central northbound trains to pick up at Air Line Junction. The CHAIRMAN stated that PD-1 had been put on in 1950 and was taken off in 1953 due to a falling off in business, but not because the Carrier felt any agreements were being violated.

GENERAL CHAIRMAN RYAN then stated that the 1931 and 1932 agreements were made by Grand Lodge Officers and contends that the closing of North Toledo Yard is nothing more than a consolidation and would have an effect on the 1931 and 1932 agreements. He further stated that an agreement was made in 1948, and we are in violation of the Railway Labor Act as we could not abrogate the May 1, 1948 agreement because it contained other items than North Toledo Yard. MR. RYAN also stated that we were in violation of Section 6 of the Railway Labor Act in not serving formal notice of the desire to change the May 1, 1948 agreement. The CHAIRMAN explained that we did not feel that we were violating the 1931 and 1932 agreements and that we did not feel that it was necessary to serve a Section 6 notice for this reason. CHAIRMAN also mentioned that if there was a question of equity arising as a result of the closing of North Toledo Yard in 1955,

that it was a problem for the Organizations to determine how the equity should be handled and what men should man certain jobs, but that it was not either the duty or the business of railroad management to interfere in such conditions and arbitrarily assign men on any given seniority district to a job. The CHAIRMAN also stated that we were more than willing to sit down at any time with the Committees of the Line West, Ohio Central and Michigan Central and assist in any way that we could to thresh out any questions of equity.

LOCAL CHAIRMAN COLLINS then stated that he was not talking about equity and said that we were farming out work to other seniority districts and that cars should be pulled from Air Line to Stanley rather than being picked up by Michigan Central trains at Air Line Junction. The CHAIRMAN explained that we were not farming out work to other seniority districts, that the Carrier was within its rights to redesignate interchange points, and also from a service viewpoint we certainly could not add cars to the reciprocal pullers operating between Air Line Junction and Stanley Yard and expect to retain the business. The CHAIRMAN also stated that we were not meddling in any way with the presently constituted reciprocal pullers operating between Air Line Junction and Stanley.

GENERAL CHAIRMAN RYAN then stated that the General Committee had insufficient time to review the entire proposal. The CHAIRMAN stated that notification was given to all of the local committees on June 7, 1955 of our intention to close North Toledo Yard and that a meeting was held to discuss this closing on June 11th, 1955 by the Superintendent at Toledo and all available information was given to the local committees as to what was intended be done at North Toledo. It was also explained that a copy of the notification to each local chairman was given to each General Chairman under date of June 7, 1955, and that while the various agreements contain definite restric-

tions as to advance notice of taking off jobs, such as 8 hours, 24 hours, 48 hours, etc., that in this case the notification was made over a month in advance and that we had done everything possible to give full and complete information on the closing and had leaned over backwards to answer any and all questions at the meeting.

GENERAL CHAIRMAN SHIPLETT then stated that he was associated with the 1932 Agreement which started back in 1930 and as a result of committees not agreeing, the agreement was made by the Grand Lodge officers. He asked did not your people think that this matter should have been handled under the Railway Labor Act and a formal notice given as it constituted a change in working conditions. The CHAIRMAN replied that we did not feel that this was a change in working conditions as each of the employees concerned had seniority rights which they could exercise, and that therefore we did not believe a Section 6 notice was justified. The CHAIRMAN again mentioned that if there was a question of equity involved that this was a matter for the Organizations to thresh out and was not a subject for negotiation by Management.

LOCAL CHAIRMAN SWERT then asked why General Chairman Collin—BofRT—Michigan Central, was not present, and Mr. Van Wart replied that he had discussed with Mr. Collin prior to the meeting at Toledo the contemplated closing down of North Toledo Yard and Mr. Collin advised Mr. Van Wart at that time that, other than for information purposes, his people were not affected. Furthermore, Mr. Collin was in attendance at the meeting at Toledo June 11th and had the same information that was now given here this morning.

LOCAL CHAIRMAN SWERT then stated that at the Toledo meeting on June 11th General Chairman Collin had stated only one Michigan Central northbound crew could pick up at Air Line Junction but no others. The CHAIRMAN explained that the agreement with all four of the

Michigan Central organizations recognizes the right to pick up at either Air Line or North Toledo, or both, and that there is no restriction, in the agreement as to the number of such trains that can perform such service.

ACTING GENERAL CHAIRMAN BURKLEY then stated they felt that the Michigan Central road crews were doing yard work and absorbing puller work that rightfully belonged to yard crews. The CHAIRMAN explained that the cars that were intended to be picked up at Air Line Junction by Michigan Central northbound trains were intended for road movement and would move directly to the Michigan Central without further intermediate switching or handling. We did not feel this constituted an infringement of yardmen's rights.

GENERAL CHAIRMAN RYAN then stated that the position of the BofLE—Line West, and that he was speaking for the BofLF&E—Line West, was that the 1932 and 1948 agreements were being abrogated and that we were in violation of the provisions of the Railway Labor Act. MR. RYAN also stated that their position was that yard work was being supplemented by road men.

The CHAIRMAN then asked if there were any further questions from anyone as to what was intended at North Toledo Yard and if we could furnish any additional information along this line. There were no further questions and the meeting was adjourned at 12:25 P.M. DST, July 7, 1955.

G. W. MAXWELL,
General Superintendent.

DEFENDANTS' EXHIBIT T
COPY
MEETING HELD IN GENERAL SUPERINTENDENT MAXWELL'S OFFICE — JULY 7, 1955 ON ABANDONMENT OF NORTH TOLEDO YARD.

The following were present:

Ref B.L.

R. G. Buckley, NYC—Line West
F. C. Montgomery, NYC—Line West
L. J. Collins, NYC—Line West
R. E. Swart, NYC—Line West
W. E. Atkinson, T & OC

NYC

G. W. Maxwell
A. T. VanWart
V. E. Peterson
W. A. Shea
J. R. Sprunk
Mr. O'Keefe

ORC & B

L. E. Gerard, NYC—Line West
H. R. Nelson, T & OC

B of L E

P. J. Ryan, NYC—Line West
J. F. Cone, T & OC
C. J. Brabenac, M C

B of LF & E

E. M. Jones, T & OC
E. T. Shiplett, MC

General Superintendent Maxwell introduced those present. Mr. Maxwell opened the meeting with an explanation of what the Carrier's intention is at North Toledo Yard and that on June 8, 1955 the Local Chairman at Toledo were notified effective July 10, 1955 North Toledo Yard would be closed.

Toledo Supt. Shea held a meeting on June 11th when explanations were made to all employee representatives concerning their people affected and among which were carmen, yardmasters, clerks, etc. He exhibited copies of the notice. He then went on to say that their investigation shows that an engine assigned to all three (3) tricks on

and off duty at No. Toledo is manned by MC engineers and firemen and the ground crew or trainmen are prior right MC men who seniority merged with Air Line. The only man not protected thru seniority were the carmen but it was his understanding that arrangements had been made to dovetail these men with Air Line carmen's seniority.

That No. Toledo Yard is a former MC Yard which was taken into the greater Toledo Yard territory in 1932 when a consolidation Agreement including the MC men in the greater Toledo seniority was made.

The Carrier maintained a Puller for many years at Air Line Jct. which pulls cars from that point to No. Toledo Yard. When the consolidation was made in 1932 the MC road crews made the pick-up and which has since been discontinued and now all movements were made by yard crews moving cars and the yard crews at No. Toledo switched the cars for dispatch over the MC.

He further explained it is their intent to close No. Toledo Yard entirely and change the interchange point of the C & O RR, Toledo Terminal, NKP which includes the old Wheeling and Cloverleaf; PRR; and the B & O for delivery to NYC at Stanley Yard for northbound movement with no change at Stanley.

At Air Line Jct. it was their intent to make six (6) groups—5 for points other than Detroit, then to restore PD1, a train originating at Youngstown to take the Detroit city freight. This PD No. 1 originating at Youngstown will go to Elyria; then a Toledo East crew will take the Detroit city cars out of Collinwood, go to Elyria pick up the Detroit cars and go to Air Line Jct. then they will order and MC crew to go to Air Line Jct. pick up this train and go to Detroit. However, intend to do no intra city Yard work in Toledo Terminal, just pick up the train at Air Line Jct. and go to Detroit. This will affect all the men now working at No. Toledo Yard on all (3) tricks as well as the extra work. It also affects the Yardmasters, clerks, and carmen. They

contend they have done every thing possible to keep all affected organizations fully informed in an attempt to do this on an orderly basis.

He said that the Carrier realized that the organizations have problems in connection with the abandonment but they feel there are certain economies by closing No. Toledo Yard but their sole motive in this action is to improve service and meet competition. The question was asked as to the volume of deliveries at Stanley Yard by Foreign Yards. Mr. Maxwell replied he did not know but would make an effort to secure this data.

Mr. Atkinson (G.C. T&CC): Are any records being made of this meeting so that we may definitely know just what your position is?

Mr. Maxwell (Supt. NYC): We will advise you, however you know that we have no stenographer here, but will supply you with notes from memory.

Mr. Atkinson: Will these notes be sent to all the Local Chairmen at Stanley?

Mr. Maxwell: I will send the General the notes for distribution to such Chairmen as they see fit to send them to.

Mr. Atkinson: There will be some loss of jobs?

Mr. Maxwell: Yes there will be some net loss of jobs.

Mr. Atkinson: Is the Carrier prepared to apply the "Burlington" job Agreement?

Mr. Maxwell: All men involved have seniority rights except the carmen.

Mr. Atkinson: We feel that any man displaced in whatever way should be covered by the application of this Agreement.

Mr. Maxwell: We don't interpret it that way.

Mr. Collins (LC. BRT): Is this consolidation?

Mr. Maxwell: No.

Mr. Collins: Is this economies?

Mr. Maxwell: There are certain economies but we do not consider this a consolidation, rather a redesignation of in-

terchange points.

Mr. Collins: How many MC crews are involved?

Mr. Maxwell: 3 tricks, however we don't intend to disrupt the industrial work in that vicinity.

Mr. Collins: You are arbitrarily ignoring the Bum No. 5 Agreement.

Mr. Maxwell: I don't like the word arbitrarily; as far as No. Toledo Yard is concerned it is closed and Puller service is not needed.

Mr. Burkley (Act. Gen. Chm. BRT—NYC—Lines West): The same principle on the PD No. 1 which is now at the Board covers the operation outlined previously and after the case went to the Board you discontinued PD No. 1.

Mr. Maxwell: We feel we can make that move and the only reason PD No. 1 was discontinued was there was no business.

Mr. Swert (L.C. (BRT): Introduced an Agreement dated Sept. 19, 1935 which he contended is being violated by this action.

Mr. Ryan (G.C. BLE NYC Lines): Stated he had talked to General Chairman Brown, BofLF&E at some length about this case and (1). They don't feel that the Committees have been given enough time to explore this issue and (2). We should be permitted to investigate further.

On Aug. 28, 1930 a decision was handed down by the four (4) chiefs of the Brotherhood on the consolidation at Toledo and call this what you may it is consolidation of work and our records show that considerable consideration was given this problem by the (4) chief executives of the Brotherhoods.

All the Committee, MC and NYC signed an Agreement to interpret the consolidation Agreement of 1922 and you previously stated that in No. Toledo MC men man these jobs now; how can you terminate the conditions of the consolidation made by the (4) chief executives in 1930? The only modification was made to make the Agreement workable

and that modification was agreed to in 1948 and I cannot understand how you can throw out one part of an Agreement without negotiations under the Railway Labor Act.

Mr. Maxwell: All men have rights but if you question how the equity should be worked out that is your problem.

Mr. Ryan: How can you throw out part of an Agreement without negotiations?

Mr. Maxwell: We don't feel that way.

Mr. Ryan: The abandonment of No. Toledo Yard bears on all the previous negotiations which were arrived at by the (4) chief executives of the Brotherhoods.

Mr. Maxwell: We do not feel we are changing any of the conditions of the Consolidation Agreement.

Mr. Ryan: It is our opinion that the whole Agreement is out the window when you close No. Toledo Yard.

Mr. Maxwell: All employees may exercise their seniority by displacement, if there still exists a disorganization in the remaining portion of seniority that must be worked out between the organizations.

Mr. Ryan: You have now answered the question, No. Toledo is out of the picture but we swapped work when we relinquished the work to the MC enginemen at No. Toledo Yard now you are going to let the displaced men go into this seniority district and exercise seniority against men who relinquished certain rights to them and this is negotiable and I repeat you are in violation of the National Railway Labor Act when no due Section 6 notification was made. No part can be changed without due notice under the Act and we want more time to confer with the Committee.

Mr. Maxwell: We are not violating the terms of any Agreement but if the organizations feel there are inequities, we are perfectly willing to sit down with them and iron it out solely as a mediator however.

Mr. Ryan: Our chief executives opinions and decisions are being ignored and if this contemplated move of yours is

permitted all consolidation Agreements are in jeopardy.
Mr. Maxwell: We cannot negotiate inequities.
Mr. Ryan: The 1948 Agreement is signed by the Carrier.
Mr. Collins (L.C.BRT): You are literally farming work to another seniority district.
Mr. Maxwell: We cannot go along with you. It is understood a Carrier has a perfect right to change a designated interchange point.
Mr. Collins: You are eliminating work, depriving men in a seniority district.
Mr. Maxwell: I repeat, this is a question of equity. As for the notice in this case we gave you at least a months notice; we have met the Local Chairmen in an attempt to provide the answers to any of their questions and if there is a question of equity we will referee but cannot negotiate.
Mr. Ryan: In this action there is a violation of consolidation and is subject to negotiation and we feel you are bound by the 1948 Agreement pertaining to consolidation to serve notice of modification. We want more time to explore.
Mr. Maxwell: Is the 1948 Agreement a supplement to the 1932 Agreement?
Mr. Ryan: Reads the preamble to the understanding.
Mr. Maxwell: If after this goes into effect you feel a question of equity, we will go into it.
Mr. Ryan: This action is a direct violation of the National Railway Labor Act and we vigorously protest.
Mr. Maxwell: This is a question of equity and is not relevant to any Agreement.
Mr. Collins (L.C.BRT): What name do you give to roadmen picking up cars and doing work originally performed by Bum No. 5 Agreement?
Mr. Maxwell: If we have a road crew pick up cars at Air Line Jct. and take them to the Wagon Works for instance, you would be right, but road crews will take these cars to Air Line Jct. for road movement exclusively; it is not feasible for Bum No. 5 to take the cars to Stanley.

Mr. Shiplett (G.C. BofLF&E MC): Under the provisions of the 1932 consolidation Agreement signed by both sides and now in 1948 supplemental Agreement, the General Chairmen negotiated an Agreement providing for the disposition of work at No. Toledo. Your notice of the closing of No. Toledo Yard serves to modify conditions set up by the Agreement of 1948. Do you feel you have the right to change these conditions without a Section 6 notice? (Reads 1932 terminating Agreement). Have you given this the consideration due it? And further the 1948 Agreements were made to create and correct certain conditions.

Mr. Maxwell: Mr. Horning says we do not have to negotiate of this Yard since all employees involved have seniority.

Mr. Atkinson: Will the PRR deliver to Stanley Yard?

Mr. Maxwell: Yes.

Mr. Atkinson: There is an Agreement being violated when Puller crews are being deprived of work, as I understand it your intention is to give road crews the work that the Yardmen have enjoyed for many years.

Mr. Maxwell: There will be no change.

Mr. Atkinson: You contend that the men affected by closing No. Toledo Yard will be able to exercise seniority in other Yards and by evolution young men will hit the bricks.

Mr. Maxwell: This dispute involves northbound business only.

Mr. Burkley (Act. G. C. BRT—NYC—W): Road crews are abolishing work pe ormed by Puller crews and we ask for a continuance to investigate further a one (1) hour arbitary for MC road crews which I have just learned about; I repeat that the PD No. 1 case now in National Board of Adjustment, Division 1, involves the same principle.

Mr. Ryan: That is true, a principle is involved all over the Line West.

Mr. Swert (L.C. BRT): Was F. A. Collin, General Chairman MC invited?

Mr. Van Wart (MC): No, I talked to him by phone.
Mr. Atkinson: Collin protested the MC crews picking up at Air Line Jct. with the exception of certain trains.
Mr. Swert: (Reads minutes of June 11th meeting which quotes F. A. Collin.) Evidently Mr. Collin had something in mind at that time and I believe he should be present to express his views.

Mr. Van Wart: We do not agree with Mr. Collin's opinion expressed at Toledo.

Mr. Swert: There will be things done here that might affect Mr. Collin and I will be no party to any other understanding without his being present. Is the letter of June 7th advising of the closing of No. Toledo Yard your letter of intent under the Act?

Mr. Maxwell: No. We were giving you a letter to keep you informed; this was no arbitary and we gave you a reasonable notice.

Mr. Collins (L.C. BRT): We still feel this is an arbitrary.
Mr. Ryan: What movement does the closing of No. Toledo Yard involve?

Mr. Maxwell: This involves northbound movement only.
Mr. Ryan: I want to know this for information on the reciprocal Puller Agreement. We have named our objection namely: no notice under the Railway Labor Act, and I am now in a position to state that the Brotherhood of Locomotive Firemen and Enginemen are represented by me by authority given to me by phone call from Acting General Chairman at 11:45 A. M.

There was a period of approximately 35 minutes at which time the Carrier conferred and evidently with someone higher than those present and at about 12:30 P. M. Mr.

Maxwell stated that if there was nothing further to be said he would adjourn the meeting and advised that they would close North Toledo Yard at 11:00 P.M. on July 10, 1955.

CC:

W. E. Atkinson, Gen. Chm. T & OC (BRT)
P. J. Ryan, Gen. Chm. NYC—Line W (BLE)
R. E. Brown, Jr., Gen. Chm. NYC—Line W. (BLF&E)
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No. 452

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, *et al.*, *Petitioners,*

v.

THE NEW YORK CENTRAL RAILROAD COMPANY, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, *et al.*, *Petitioners,*

v.

THE NEW YORK CENTRAL RAILROAD COMPANY, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners* pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on June 14, 1957.

* Petitioners are international railway labor organizations and are affiliates of the Railway Labor Executives' Association, an organization consisting of twenty-two of the twenty-three standard national and international railway labor organizations. This Association, by official action of its constituent members, has authorized Petitioners to state that it desires to support the petition for certiorari and will request the Court for permission to participate as *amicus curiae* if the writ is granted.

OPINIONS BELOW

The opinion and judgment of the United States District Court for the Northern District of Ohio, Western Division, printed as Appendix B hereto, *infra*, p. 7A, is reported at 140 F. Supp. 273. The opinion of the Court of Appeals is unreported and is printed as Appendix C hereto, *infra*, p. 27A.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on June 14, 1957, and is printed in Appendix C, *infra*, p. 42A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

The judgment of the Court of Appeals raises the following questions:

1. Does a United States District Court have jurisdiction over the subject matter of a complaint in which a railroad seeks to enjoin a threatened strike by its employees when the asserted right of the plaintiff to such relief does not flow out of the United States Constitution or a statute enacted pursuant thereto, and jurisdiction is predicated solely on the basis of the duties imposed upon carriers by the Interstate Commerce Act?

2. Do railroad employees have a right to strike for the purpose of preventing carrier action which (a) would cause the abolition of their jobs, (b) would ad-

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[1] The opinion of the Court of Appeals follows R. 226 which refers to the pages of the printed Joint Appendix of the record before the Court of Appeals filed in accordance with Rule 21, Par. 3. References to pages of the opinion appear in this petition as Op. 1 through 12.

versely affect their working conditions through loss of seniority and priority right to designated work, and (c) would result in the unilateral disruption of agreements with the railroad for the performance of yard work in a terminal area and the allocation of seniority between the railroad's freight yards in that area?

3. Does the Norris-LaGuardia Act prohibit a United States District Court from enjoining a threatened strike against a railroad by its employees under circumstances where the employees have complied with all applicable provisions of the Railway Labor Act and the purpose of the strike is the objectives set forth in paragraph 2 above?

4. Does a United States District Court have authority to enjoin a threatened strike against a railroad by its employees when the railroad has available to it the procedures of the Railway Labor Act for the settlement of the dispute giving rise to the strike threat and has refused to avail itself of those procedures?

STATUTES INVOLVED

The statutory provisions involved are Sections 2, 3, 5, 6, 7, and 10 of the Railway Labor Act [45 U.S.C. 152, 153, 155, 156, 157, and 160]; Section 1(4) of the Interstate Commerce Act [49 U.S.C. 1(4)]; and Section 4 and 14(a) of the Norris-LaGuardia Act [29 U.S.C. 113(a)]. These provisions are printed in Appendix A, *infra*, p. 1A.

STATEMENT

This litigation began when The New York Central Railroad Company (hereinafter referred to as the "New York Central") on January 26, 1956, filed a complaint in the District Court asking for a declaratory

judgment finding that the petitioning railway labor organizations and certain named officers of said organizations, who were the duly certified representatives under the Railway Labor Act [45 U.S.C. 151 et seq.] of certain of the railroad's employees, had no right to call a strike to prevent the closing of the carrier's North Toledo Yard and for the issuance of a permanent injunction against such a strike (R. 7-19). The complaint alleged that the District Court had jurisdiction of the suit because it arose under the laws of the United States regulating commerce and the Fifth Amendment of the Constitution (R. 9). The only federal statutes cited in connection with this allegation were the Federal Declaratory Judgment Act [28 U.S.C. 2201 and 2202] and Interstate Commerce Act [49 U.S.C. 1 et seq.].[2] The complaint also alleged that the threatened strike would invade property rights of the railroad and was illegal (R. 25).

The petitioners filed an answer to the complaint which denied that the sole purpose of the threatened strike was to prevent the closing of the North Toledo Yard (R. 25) or that it would invade any property right or other legally protected right of the railroad (R. 25). The answer also denied that the railroad had exhausted its available administrative remedies (R. 25) and set up the affirmative defense that the railroad's request for injunctive relief was barred by the provisions of the Norris-LaGuardia Act (R. 27).

The threatened strike arose out of a dispute between the New York Central and the petitioners which began on June 7, 1955, when the railroad advised its employees that it would shut down the carrier's North

[2] R. 17.

Toledo Yard, one of three freight yards in the Toledo area, effective July 10, 1955 (R. 10, 21, 51, 151). The petitioners objected thereto and asked the railroad to confer with the two organizations on such closing and the problems connected therewith. The New York Central did hold two meetings on June 11, 1955, and July 7, 1955, at which the management explained its position and the employees voiced their objections (R. 51, 200-226). At these meetings the employee representatives explained that the closing of the yard would result in the loss of jobs, would adversely affect the working conditions of the employees engaged in such work by destroying their seniority rights in the Toledo terminal area, and would unilaterally abrogate long-standing agreements between the two Brotherhoods and the railroad for the performance of yard work in said area (R. 42, 70-72, 80, 206, 216, 223, 224). The railroad refused to negotiate with respect to the matter on the ground that the decision to close the yard was an absolute prerogative of management with which the employees were not properly concerned regardless of the effects upon them or their agreements (R. 42, 70-72, 80, 206, 216, 223, 224).

The petitioning Brotherhoods therefore made formal application to the National Mediation Board for compulsory mediation of the dispute pursuant to Section 5, First, of the Railway Labor Act [45 U.S.C. 155, First] (R. 166-170, 190). Under Section 6 of that statute [45 U.S.C. 156], the railroad was required to maintain the *status quo* until the controversy had been acted upon by the Mediation Board. On August 1, 1955, the Mediation Board advised the parties that it could not compel mediation because there was no specific contract between the railroad and the two Broth-

erhoods for continued operation of the North Toledo Yard and the Brotherhoods had not requested the execution of such an agreement. The Board also suggested the possible use of National Adjustment Board machinery under Section 3 of the Railway Labor Act [45 U.S.C. 153] for settlement of any claims of violations of existing agreements (R. 158).

The New York Central then re-scheduled the closing of the North Toledo Yard for August 7, 1955 (R. 159). The two Brotherhoods gave notice of a strike against the western division of the railroad (R. 159, 171, 172), and the National Mediation Board proffered its services under Section 5, First (b) of the Railway Labor Act [45 U.S.C. 5, First (b)]. These services were accepted by the unions and the railroad (R. 159, 160, 172). The railroad then postponed the closing of the yard, as it was required to do by the Railway Labor Act (R. 160, 161).

The National Mediation Board thereafter made unsuccessful efforts to settle the dispute but reported to the employees that "in all instances the carrier refused to negotiate" (R. 148). Therefore, on December 14, 1955, the Mediation Board relinquished jurisdiction of the dispute (R. 161, 162). The railroad rescheduled the closing of the North Toledo yard for January 21, 1956, and the Brotherhoods called a strike against the western division of the carrier (R. 162).

The District Court issued an *ex parte* restraining order against the strike which continued in effect during the proceedings before the court (R. 35). That court on May 1, 1956, issued its opinion holding that the New York Central was entitled to the relief requested in its complaint (R. 30-48), and on June 4,

1936, entered an injunction permanently enjoining the petitioners from conducting any strike, work stoppage, or any other act of economic coercion to keep or prevent the railroad from closing the North Toledo Yard (R. 39-60). On appeal, the majority of the Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court, holding (1) that the District Court had jurisdiction over the subject matter of the complaint; (2) that the employees did not have a right to conduct the threatened strike since their controversy with the railroad did not involve a labor dispute within the intent of the Railway Labor Act; (3) that the Norris-LaGuardia Act did not prohibit the granting of an injunction to prevent the strike; and (4) that the railroad did not have available administrative remedies under the Railway Labor Act to settle its dispute with the employees (Op. 1-12). Circuit Judge Stewart dissented on the ground that the District Court did not have jurisdiction of the subject matter of the complaint (Op. 12).

REASONS FOR GRANTING WRIT

1. The present petition raises important questions which should be resolved by this Court concerning jurisdiction of the federal courts, the right of railroad employees to strike, the application of the Norris-LaGuardia Act, and the necessity of a railroad exhausting the procedures under the Railway Labor Act as a condition precedent to injunctive relief.

A. *Jurisdictional Issue.* The Court of Appeals held that the District Court had jurisdiction over the subject matter of the complaint because of the duties imposed upon railroads by the Interstate Commerce Act to furnish facilities for passengers or freight, and

to engage in interstate commerce in the service of the public (Op. 10, Op. 7-12). The majority relied upon *Toledo, Peoria & Western Ry. Co.* v. *Brotherhood of Railroad Trainmen*, 132 F. 2d 265, as precedent for this holding. Circuit Judge Stewart dissented from such holding on the ground that the controversy did not arise under the United States Constitution and "I cannot perceive that it arises under the laws of the United States." He cited in support of his views the dissenting opinion of then Circuit Judge Minton in the *Toledo, Peoria & Western* case (Op. 12).

These conflicting views with respect to the jurisdiction of federal courts have not been heretofore resolved by this Court. The issue came before the Court in its review of the *Toledo, Peoria & Western* case but was not determined since the Court reversed the decision of the Court of Appeals for the Seventh Circuit sustaining an injunction issued against a railway labor organization because the railroad plaintiff had failed to make every reasonable effort to settle the dispute. *Brotherhood of Railroad Trainmen, et al.* v. *Toledo, Peoria & Western Railroad Co.*, 321 U.S. 50 (1944). The Court stated that in view of such disposition of the case, it had not determined the other issues which were presented. The Court observed (p. 67) that:

> "Some are of such importance they should not be decided in advance of necessity for determining them. That necessity is not present in this case. Accordingly, we express no opinion concerning those issues."

These issues included the jurisdictional question with which we are here concerned. Thus the importance of the issue has been recognized by the Court.

B. *Right of the Employees to Strike.* The Court of Appeals held that the threatened strike did not have a valid purpose because the unions were not seeking to exercise any labor rights against the railroad (Op. 4). The Court reached this conclusion by divorcing, as had the District Court, the effects of the closing of the yard upon the employees and their agreements from the physical act of terminating yard operations. It held that a strike to prevent the latter did not involve a legitimate labor dispute because it was unconnected with issues of representation, employment, or contractual rights. It also held that the controversy concerning the effect of the closing of the yard upon the employees was a separate and distinct problem which could be met when the time arrived (Op. 5). Neither the Court of Appeals nor the District Court was able to cite a single judicial precedent to support this treatment of the controversy and the conclusion reached. The holding not only is without precedent but, if allowed to stand, can seriously interfere with the right of railroad employees to rely upon economic self-help in situations where, as here, they have exhausted all remedies available to them under the Railway Labor Act. It is submitted that such a result should not be permitted without a review by this Court of the issue raised by the decision below.

C. *Application of the Norris-LaGuardia Act.* The Court of Appeals held that the Norris-LaGuardia Act did not prohibit the issuance of an injunction against the threatened strike since the controversy did not involve a labor dispute (Op. 5, 6). Here again neither the District Court nor the Court of Appeals cited a single decision of any court interpreting the Norris-LaGuardia Act to support this conclusion. Moreover,

the holding ignores the principle that has been well established in the interpretation of the Norris-LaGuardia Act that in the absence of fraud or violence, the purpose of a strike, the motives of the strikers, or the illegality of the strike are of no significance in determining the applicability of that statute. Here again the unprecedented nature of the holding of the court below and its narrowing of the scope of the Norris-LaGuardia Act to the detriment of railway employees clearly calls for a review of the issue raised by this Court.

D. *Failure to Exhaust Administrative Remedies.* The Court of Appeals held that the railroad was not required to exhaust the administrative remedies available under the Railway Labor Act as a condition precedent to obtaining injunctive relief because such remedies are available only in cases involving labor disputes, and the controversy in the present case did not involve a labor dispute within the meaning of the statute (Op. 5, 6). The court held that there were only two types of disputes under the Railway Labor Act, one of which grows out of a disagreement in the bargaining process for a new contract and the other of which involves a controversy over the meaning of an existing collective bargaining agreement in a particular fact situation (Op. 5). This conclusion was reached in spite of the clear language of Section 2, First of the Railway Labor Act [45 U.S.C. 152, First] which encompasses "all disputes," whether arising out of the application of existing agreements "or otherwise," and the provisions of Section 5, First (b) of that statute [45 U.S.C. 155, First (b)] which embraces disputes other than those involved in the making of a new collective

bargaining agreement and which are not referable to the National Railroad Adjustment Board. Moreover, the Court of Appeals held that there was no dispute referable to an Adjustment Board under Section 3 of the Railway Labor Act [45 U.S.C. 153], in spite of the fact that the record clearly shows that from the very beginning the railway labor organizations objected to the carrier's action because of its claimed effect upon their existing contracts (R. 42, 70-72, 80, 206, 216, 223, 234). Indeed, this formed in part the basis of their original invocation of Mediation Board services (R. 166-170, 194). Here again the holding of the court below was entirely unsupported by any judicial precedent. It is submitted that a decision of such impact with respect to the scope of the Railway Labor Act should not be permitted to stand without review by this Court.

2. The decision of the Court of Appeals is believed by petitioners to be contrary to and in conflict with the decisions of this Court concerning the right of railway labor employees to strike, the application of the Norris-LaGuardia Act, and the scope of the Railway Labor Act.

The decision holding that the strike was not for valid labor objectives is contrary to the decision of this Court in *Hunt* v. *Crumboch*, 325 U.S. 821 (1945) where the Court declared that Congress recognized an absolute right in employees to strike according to their own judgments (p. 825, f.n.1):

> "Dorchy v. Kansas, 272 U.S. 306, 311, 71 L. ed. 248, 269, 47 S. Ct. 86, cited here in dissent, has no relevancy to the issues before us. In that case Dorchy was convicted of calling a strike to enfore a state claim contrary to state law. He attacked

> the state law on the ground that the right to strike was guaranteed by the Fourteenth Amendment. This Court rejected Dorchy's constitutional contention with the statement that 'Neither the common law nor the Fourteenth Amendment confers the absolute right to strike.' The Court had no reason in the Dorchy Case to consider the Clayton Act, which as we decided in the Hutcheson Case does recognize an absolute right of employees to work or cease working according to their own judgments. That which Congress has recognized as lawful, this Court has no constitutional power to declare unlawful, by arguing that Congress has accorded too much power to labor organizations."

The decision is also contrary to the decision of this Court in *United States* v. *Hutcheson*, 312 U.S. 219 (1941), in which this Court stated (p. 232):

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness of wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

In addition, it is contrary to the decision in *United States* v. *Carrozo*, 37 F. Supp. 191 (D.C. Ill., 1941), sustained by this Court per curiam in *United States* v. *International Hodcarriers, et al.*, 313 U.S. 539 (1941), and the decision in *United States* v. *American Federation of Musicians*, 47 F. Supp. 304 (1942), affirmed by this Court per curiam in *United States* v. *American Federation of Musicians*, 318 U.S. 740 (1943). In the *Carrozo* case, the District Court involved made the following findings with respect to lawful activities of a labor organization:

> "Such normal, legitimate and lawful activities of a labor union include the calling of strikes, or threatening to call strikes, in order to enforce their demands, as in the present case a demand against the use of labor saving devices which will displace their members; or, in the alternative, the demand that if the labor saving device is used the same number of men be employed as would be if the other type of mixer were used. These are legitimate and lawful activities which a labor union is permitted to carry on in an effort to maintain employment and certain working conditions for its members, and any restraint of trade or commerce attendant thereon is only indirect and incidental."

In the present case, a strike to prevent the closing of the North Toledo Yard would have protected the job opportunities of the employees involved and would have prevented an adverse change in the working conditions of such employees. These objectives are clearly recognized as valid reasons for a strike in the cited cases. In contrast, the Court of Appeals was unable to cite any decision supporting its view (Op. 4, 5).

Petitioners also believe that the decision of the Court of Appeals with respect to the application of the Norris-LaGuardia Act is contrary to the decisions of this Court which make clear that such statute was intended to "drastically" curtail the jurisdiction of federal courts in the labor field and that the term "labor dispute" as used in that Act must be given a liberal interpretation in light of its purposes. *Milk Wagon Driver's Union Local 753* v. *Lake Valley Farm Products*, 311 U.S. 91 (1940)[3] In holding that the

[3] To the same effect is the decision of the United States Court of Appeals for the Seventh Circuit in *United Electrical Coal Companies* v. *Rice*, 80 F. 2d 1 (C.A. 7, 1935).

threatened strike did not arise out of a labor dispute within the meaning of the Norris-LaGuardia Act because of the purposes thereof, the decision below is directly contrary to that of this Court in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), where the Court declared (pp. 559-560):

> "* * * The Court of Appeals thought that the dispute was not a labor dispute within the Norris-La-Guardia Act because it did not involve terms and conditions of employment such as wages, hours, unionization or betterment of working conditions, and that the trial court, therefore, had jurisdiction to issue the injunction. We think the conclusion that the dispute was not a labor dispute within the meaning of the Act, because it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions is erroneous."

The petitioners also believe that the decision of the Court of Appeals with respect to the application of the Norris-LaGuardia Act was in direct conflict with the decision in *Diamond Full Fashion Hosiery Co.* v. *Leader*, 20 F. Supp. 467 (D.C.E.D., Pa. 1937), which was handed down by District Judge Maris, now on the Third Circuit, in which the court held that the Norris-LaGuardia Act prohibited it from enjoining a strike by the employees of the plant to prevent the shutting down of that plant and the transfer of its machinery for use in a business in another state. In holding the Norris-LaGuardia Act applicable to the situation, the Court declared (p. 469):

> "Does it involve a controversy concerning terms of conditions of employment? I think it does *Certainly the duration of employment is one of it*

most vital terms. Here the defendants had a union contract which was in force on August 6, and it was their contention that they had been locked out of their employment by the Vogue Company. I am satisfied from the evidence that their sole purpose in picketing the Vogue Mill was to endeavor to get their jobs back. All of the elements of a labor dispute were present. *Whether the defendants' position was justified or had any real basis is beside the point and is not for this court to pass upon. The fact remains that there was a dispute between the defendants and the Vogue Company and that it was a labor dispute."* (Emphasis supplied.)

The appeal from this decision of the Third Circuit was dismissed on agreement of counsel, 99 F. 2d 1001 (1937).

Finally, petitioners believe that the decision below is in conflict with the decision of this Court in *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U.S. —, 1 L. ed 722, decided April 8, 1957, insofar as one of the purposes of the threatened strike was to prevent a claimed violation of their existing work agreements relating to seniority and allocation of work in the Toledo terminal area. In the *Manion* case this Court held that a railway labor organization could not be enjoined from striking over a dispute with a railroad concerning the interpretation of an agreement between the organization and the carrier where the plaintiff railroad had not made any effort to submit the dispute to the National Railroad Adjustment Board.

3. The decision of the Court of Appeals is erroneous.

The Court of Appeals sustained the jurisdiction of the District Court solely on the basis of the duty resting on the plaintiff under the Interstate Commerce

Act.[4] It is well established that in order for a federal question to arise in a suit, the facts set forth in the complaint must show that the plaintiff has a right flowing out of federal law to be vindicated by the relief requested. *Gully* v. *First National Bank*, 299 U.S. 109 (1936). The plaintiff asserted that it had such a right because if the strike took place, the railroad would be in violation of the provisions of Section 1(4) of the Interstate Commerce Act [49 U.S.C. 1(4)], which makes it the duty of every common carrier subject to the Act to provide and furnish transportation upon a reasonable request therefor. However, such an obligation does not establish a right flowing from a federal statute. If the decision of the Court of Appeals is right, then the federal courts have jurisdiction over every suit brought by a railroad or any other carrier subject to the Interstate Commerce Act growing out of a threatened strike regardless of the basis of the claimed relief. Moreover, the Interstate Commerce Commission, which is charged with the enforcement of the cited provision, has held that the duties imposed by that statute to provide service are conditional and are not violated by a carrier ceasing operations during a strike. *Montgomery Ward & Co.* v. *Consolidated Freightways*, 42 M.C.C. 225 (1943). The duties imposed on carriers under the Interstate Commerce Act have also been rejected by the courts as a basis to enlarge federal jurisdiction. *Lee Way Motor Freight, Inc.* v. *Keystone Freight Lines*, 126 F. 2d 931, 934 (C.A. 10, 1942), *cert. den.* 317 U.S. 645 (1942); *East Texas Motor Freight Lines* v. *International Brotherhood of Teamsters*, 163 F. 2d 10, 12 (C.A. 5, 1947). It is submitted that the dissent of then Circuit Judge Minton

[4] No question of diversity of citizenship was present.

in *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Ry Co.*, 132 F. 2d 265 (C.A. 7, 1942), which was adopted by Circuit Judge Stewart in this case, is a correct statement of the law and that there was no jurisdiction in the District Court to entertain the railroad's complaint.

The Court of Appeals held that the threatened strike was invalid although there is nothing in the Railway Labor Act prohibiting the exercise of the right to strike so long as a labor organization has complied with the procedural steps laid down in that Act to settle the dispute involved or unless the dispute is subject to Section 3 of the statute and is before an Adjustment Board. The court below did not find that either of these conditions was present. Yet it concluded that the strike was illegal since there was no labor dispute within the meaning of the Railway Labor Act (Op. 5, 6).[5] It is submitted that the decisions cited under Point 2 above clearly demonstrate that the objectives of the strike were legitimate, even if we accept the artificial splitting of the dispute into two parts so as to separate the effects of the railroad's action from the action itself. In addition, the petitioners urged before the Court of Appeals, and urge here, that it is entirely unrealistic to separate the action of the railroad in closing the North Toledo yard from the effects thereof on the employees involved. These effects include loss of job opportunities, changing of working conditions because of lack of seniority in other yards in the Toledo terminal area, and destruction of the underlying basis of the agreements covering yard work in that area. It is

[5] The term "labor dispute" is not found in the Railway Labor Act.

clear that the railway labor organizations involved were not threatening to strike just for the purpose of preventing the railroad from closing the yard but because of the adverse effects of such closing upon the employees represented by those organizations. The fact that one of those effects involves agreements between the organizations and the railroad does not mean that the dispute did not encompass such effect and that one purpose of the strike was not the protection of those agreements any more than it could properly be said that the dispute did not encompass the fact that jobs would be lost or that working conditions would be affected. When the purposes of the strike are considered as one integral package covering all of the union's objectives, we believe that those purposes were clearly valid and that they clearly involved a labor dispute within the meaning of the Norris-LaGuardia Act. Moreover, even if the controversy over the effect of the proposed closing of the yard upon the agreements between the railroad and the organizations is looked upon as a separate and distinct dispute, we do not perceive how it was possible for the Court of Appeals to hold that the Norris-LaGuardia Act was not applicable to that aspect of the dispute under the recent decision of this Court in *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U.S. — (1957) 1 L. ed. 2d 722 in light of the fact that the railroad had not submitted the issue to a National Railroad Adjustment Board. In this connection, it should be observed that the Court of Appeals cited only the decision in *Brotherhood of Railroad Trainmen, et al.* v. *Chicago River & Indiana R.R. Co.*, 353 U.S. —, 1 L. ed. 2d 622, (1957) (Op. 5.), and did not cite the subsequent limiting *Manion* decision.

Finally, petitioners submit that the decision of the Court of Appeals holding that the railroad was not

required to exhaust the procedures available under the Railway Labor Act for settlement of the controversy prior to seeking an injunction because such procedures do not apply to the dispute involved, is also erroneous. As indicated above, page 10, Section 2 of the Railway Labor Act makes it a duty of all carriers to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions and "to settle *all* disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption of commerce or to the operation of any carrier . . ." (Emphasis supplied) The railroad refused to negotiate the dispute standing on a right not to do so (R. 42, 70-72, 80, 206, 216, 223, 224). Moreover, Section 5, First (b) provides that the services of the Mediation Board may be invoked in two types of cases. These are: (1) a dispute concerning changes in existing agreements concerning rates of pay, rules, or working conditions, (2) any other dispute not referable to a National Railroad Adjustment Board. It is the position of the petitioners that the present dispute at least clearly falls within the latter category. The Mediation Board did step in pursuant to said section and try to effect a settlement and the railroad refused to negotiate (R. 148). If the dispute was not encompassed by one of the above cited sections, then it had to be a dispute referable to a National Railroad Adjustment Board under Section 3 of the Railway Labor Act [45 U.S.C. 153] and the carrier, as a condition precedent to court relief, was required to submit the controversy to an Adjustment Board.

Finally, Section 5, First (b) requires the National Mediation Board to attempt to secure arbitration under Section 7 of any dispute in which its services have been invoked or proffered. The Mediation Board here

proffered its services and its efforts at mediation were unsuccessful. The railroad thereafter did not agree to submit the dispute to arbitration. The decision below therefore should have been governed by the decision of this Court in *Brotherhood of Railroad Trainmen, et al.* v. *Toledo, Peoria & Western Ry.*, 321 U.S. 50 (1944), and the injunction issued by the District court should have been vacated for failure of the railroad to make any effort to settle the dispute pursuant to the procedures of the Railway Labor Act.

CONCLUSION

For the foregoing reasons, this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Pertinent Provisions of Railway Labor Act

SEC. 2. [44 Stat. 577, as amended by 48 Stat. 1168, 45 U. S. C. 151a, 152] The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organzation to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretations or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

. . . . . .

SEC. 3 [44 Stat. 578, as amended by 48 Stat. 1189, 45 U. S. C. 153] First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act,[2] and it hereby provided—

. . . . . .

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act,[3] shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

. . . . . .

FUNCTIONS OF MEDIATION BOARD

SEC. 5 [44 Stat. 580, as amended by 48 Stat. 1195, 45 U. S. C. 155] First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

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[2] Act approved June 21, 1934.

[3] Act approved June 21, 1934.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

. . . . . .

Sec. 6 [44 Stat. 582, as amended by 48 Stat. 1197, 45 U. S. C. 156] Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay,

rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case, where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

ARBITRATION

SEC. 7. [44 Stat. 582, as amended by 48 Stat. 1197, 45 U. S. C. 157] First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

* * * * * * * * * * *

EMERGENCY BOARD

SEC. 10. [44 Stat. 586, as amended by 48 Stat. 1197, 45 U. S. C. 160] If a dispute between a carrier and its employees be not adjusted under the foregoing provisions

of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

* * * * * * * * * * *

Pertinent Provisions of Interstate Commerce Act

SECTION 1(4) (49 U.S.C. 1(4):

(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, . . .

Pertinent Provisions of the Norris-LaGuardia Act

SECTION 4 (29 U.S.C. 104):

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) ceasing or refusing to perform any work or to remain in any relation of employment;

* * * * * *

(g) advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) agreeing with other persons to do, or not to do any of the acts heretofore specified; and

(i) advising, urging or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

SECTION 13 (29 U.S.C. 113):

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of em-

ployees and one or more employees or associations of employees; or when the case involves any conflicting or competing interest in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

* * * * * *

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

No. 7493 Civil

Opinion of the Court

Filed May 1, 1956

The New York Central Railroad Company, Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al., Defendants.

Kloeb, J.:

Plaintiff seeks to enjoin the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen and certain named officers of these Brotherhoods from conducting a strike because of the closing of the North Toledo Interchange Yard, and, in addition, asks for a declaratory judgment that such defendants have no right to interfere with the closing of the Yard.

For many years plaintiff has operated several yards in and around Toledo, and one of these is the North Tole-

do Yard, where it receives in interchange freight cars from a number of other railroads. Another of these yards is known as the Stanley Yard adjacent to Toledo and located in Wood County, Ohio.

On June 7, 1955, plaintiff gave notification to its employees that it would close its North Toledo Yard on July 10, 1955, and transfer the interchange point to the Stanley Yard.

On June 11, 1955, and on July 7, 1955, plaintiff's officials and certain officers of the defendants held meetings at which the closing of the North Toledo Yard and its effect on approximately thirty-five men there employed was discussed.

On July 7, 1955, defendants sent to the National Mediation Board an application for mediation services under the provisions of the Railway Labor Act and stated therein that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. No request was made in the application for a change in any existing working agreements or for a new or supplemental agreement. On the same day, the Mediation Board wired plaintiff that they had received a telegram from defendants, reading as follows:

> "Serious situation existing New York Central Railroad Lines West at Toledo Ohio as the result of the management arbitrarily closing North Toledo Yard without negotiations request your Board take immediate jurisdiction over this matter and notify carrier to hold the matter status quo pending mediation proceedings. Letter follows." (Plaintiff's Exhibit 3).

On July 8, 1955, defendants filed an application for mediation services by way of a telegram (Defendants' Exhibit D), which read in part as follows:

> "Management, The New York Central Railroad Company, Lines West of Buffalo, advised Local Chairmen, representing the B. of L.E., B. of L.F. & E., and vari-

ous other Organizations of their desire to close North Toledo Yard, effective 11:00 P.M., July 10, 1955; closing this yard seriously affects agreements dated August 3, 1932, and May 1, 1948, by disrupting proper allocation interdivisional service between Michigan Central R.R. and The N.Y.C.R.R. Co., Lines West, as set forth in telegram this date."

On July 8, 1955, the Mediation Board wired plaintiff as follows (Plaintiff's Exhibit 4):

"We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to allocation of service between the two Committees at Toledo Ohio. Organizations further claim that carrier has not complied with provisions of Section, Railway Labor Act in failing to serve formal Section 6 notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without passing on propriety of formal docketing of such applications, we have assigned correspondence file C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative. Please acknowledge and advise if this request will be complied with. Joint Horning, Brown, Gilbert and Kennedy. By direction of National Mediation Board."

Plaintiff wired the Mediation Board on the same day as follows (Plaintiff's Exhibit 5):

"Receipt acknowledged your telegram requesting we defer contemplated closing of North Toledo Yard until matter can be discussed with respresentatives of carrier and organizations by Board representative. We will comply with Board's request and hope Board will

act promptly in the matter since we do not want to delay the closing of this Yard indefinitely. Our General Manager, R. H. McGraw, in Cleveland and General Manager E. C. Johnson in Detroit will represent carrier and I suggest conferences in Toledo."

Thereafter, mediation efforts were carried on by the Board with plaintiff and defendants without success and, on August 1, 1955, the Board wired plaintiff as follows (Plaintiff's Exhibit 6):

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has considered position of organizations that carrier has not complied with provisions of Section 6, Railway Labor Act by failing to serve formal notice of intention to close North Toledo Yard, also present status as reported by Mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in Memorandum Agreements of August 3, 1932 and May 1, 1948 covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board. Joint Horning, Brown Gilbert, Kennedy, MacSwan."

On August 2, 1955, plaintiff notified its employees that the North Toledo Yard would be closed on August 7, 1955.

On August 4, 1955, defendants wired the Mediation Board as follows (Defendants' Exhibit F):

"This is to advise that BLF&E and BRT are setting strike date for 6:00 AM Eastern Standard Time Sunday August 7, 1955 New York Central West account management arbitrarily closing North Toledo Yard. BLF&E also setting strike date for same time on

Michigan Central. Please accept this wire as usual 72 hour notice in cases of this kind."

In reply to the above telegram, the Board wired plaintiff and defendants as follows (Plaintiff's Exhibit 8):

"We are advised by the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen that those organizations have set strike date for six am Eastern Standard Time Sunday August 7 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Brotherhood of Locomotive Firemen and Enginemen also set strike date for same time of Michigan Central. Board hereby proffers its mediation services under provisions of Section Five First paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

On the same day, plaintiff wired the Board as follows (Plaintiff's Exhibit 9):

"Receipt acknowledged your wire date Case A-4923. We will cooperate with mediation efforts of Board this Case."

Following extended efforts on the part of the Board with representatives of plaintiff and defendants, the Board sent to plaintiff and defendants the following telegram on December 16, 1955 (Plaintiff's Exhibit 17):

"Reference is made to our Case No. A-4923 which covers a dispute between the New York Central Railroad, Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier. Mediation services of the Board were proffered in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a.m., EST. Sunday, August 7, 1955. This case has been the subject of mediation proceedings by

Board Member Francis A. O'Neil, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

On January 17, 1956, plaintiff notified its employees in writing that the North Toledo Yards would be closed at 11:00 P.M., January 21, 1956, and, on January 19, 1956, plaintiff received a telegram from the Board, reading as follows (Plaintiff's Exhibit 13):

"Following wire received date from Messrs. Kennedy and Gilbert Quote Employees of New York Central Lines West as represented by Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Firemen and Enginemen authorized to withdraw from service in a legal strike effective 11:00 PM EST Saturday January 21 1956 account of New York Centrals Notice closing North Toledo Yard at that time Unquote".

On January 20, 1956, plaintiff filed its complaint and, on the same day, upon application therefor, the Court issued a temporary restraining order restraining defendants from initiating strike on the following day, and issued an order to show cause returnable on February 3, 1956. On this latter date, the case was presented to the Court on plaintiff's motion for a preliminary injunction and, by agreement of the parties, on its merits.

At the hearing, it was stipulated by the parties that, if called, certain of plaintiff's officials, to wit, Vice President Horning, General Manager McGraw and Superintendent Shea would testify as set forth in affidavits filed by plaintiff on the question of irreparable damages that would be sustained by plaintiff and by the public if the operation of plaintiff railroad would be discontinued because of the called strike. These affidavits recited, in effect, that un-

interrupted services of the employees represented by the defendant Brotherhoods are essential to the operation of plaintiff railway company; that the stoppage of operations would cause plaintiff thousands of dollars of damages daily, would require it to lay off approximately 2,516 employees in the Toledo terminal area, resulting in a total wage loss to said employees in excess of $34,800.00 for each day of said strike; that plaintiff would be compelled to embargo shipments into and out of the Toledo terminal area, thus depriving 207 industries in Toledo and vicinity of service by rail by plaintiff railway and would prevent interchange by plaintiff with The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, The Chesapeake and Ohio Railway Company, The New York, Chicago and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, which serves 228 industries in Toledo and vicinity, that transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day, would be halted, that such strike would paralyze all operations of plaintiff between Toledo and all points on its Western District, being the prinicipal lines of the plaintiff running from Buffalo to Chicago, and from Toledo to Charleston, West Virginia, necessitating the laying off of approximately 16,361 employees in addition to the employees of the Toledo terminal area, resulting in a total daily wage loss to said employees of approximately $231,575.00; that, in addition, it would seriously disrupt passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use plaintiff's Cleveland Union Terminal, and would necessitate the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00; that such strike would seriously disrupt passenger train operations of The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company,

and the Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo and those of the Grand Trunk Railway System, which uses plaintiff's South Bend, Indiana, passenger station, those of The Pennsylvania Railroad Company, which uses plaintiff's Erie, Pennsylvania, passenger station and those of The New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago; that it would seriously affect the passenger and freight operations of other railroads which have and use trackage rights over certain sections of the Western District, as well as the operations of connecting carriers; that it would stop service to approximately 2,180 industries located on the Western District, many of which are engaged in the manufacture of goods essential to our economy; that it would stop service to approximately 110 industries which do not have side-track connections but which utilize plaintiff's team track facilities at various locations in its Western District; that it would prevent plaintiff's Eastern District, being the principal lines between Buffalo and New York and Buffalo and Boston, from receiving cars from or delivering cars to plaintiff's lines in its Western and Northern Districts, which would necessitate disruption of train service in the plaintiff's Eastern District and result in laying off of numerous employees who would suffer a substantial wage loss.

The above testimony on the question of irreparable damage is uncontroverted in the record.

At the opening of the hearing, the Court granted the request of defendants to amend the answer by adding a new paragraph 28 stating that the complaint failed to state a claim upon which relief can be granted. Counsel for defendants then moved the Court to dismiss the complaint upon the basis of paragraph 28 of the answer. For the purpose of the motion, the Court acepted the allegations

of the complaint to be true, and these included paragraph 20 of the complaint, which reads as follows:

> "The threatened strike is called for the sole purpose of requiring the plaintiff to continue the operation of said two railroad yards, North Toledo Yard and Stanley Yard, when in the decision of the management of plaintiff, the operation conducted in the two yards can be so conducted as to close North Toledo Yard and thereby expediting and more efficiently rendering service to the public."

There can be no question but that counsel for defense, as well as for plaintiff, argued the motion on the basis that the threatened strike was called for the sole purpose of requiring the plaintiff to continue the operation of the North Toledo Yard.

On page 6 of the record, counsel for defendants, referring to the complaint, made the following statement:

> "For the purposes of this one motion as it stands, it is based upon the acceptance of the factual allegations contained therein."

On page 8, counsel for defendants made the following statement:

> "It is our position that in the railroad industry the right to strike is not prohibited by any statute. . . . Therefore, it is our position that the railroad Brotherhoods had a legal right to strike on January 21st without regard to statutory provisions, even for the sole purpose of preventing the closing of the North Toledo Yard.
>
> "Our second position is that that dispute over the closing of the North Toledo Yards, assuming there is nothing else involved in it, raises a labor dispute within the meaning of the Norris-LaGuardia Act so that the provisions of that Act attach."
>
> "THE COURT: You are maneuvering, then, into a situation where you rely upon the common law right to strike, is that correct?

"MR. HIGHSAW: That is correct.

"THE COURT: And you feel that at the same time the Norris-LaGuardia Act would forbid any Court from intervening and enjoining that right?

"MR. HIGHSAW: That is correct.

* * * * *

"THE COURT: You are discounting the existence of any agreement then.

"MR. HIGHSAW: We are discounting for this purpose, Your Honor, the existence of any agreement.

"MR. WARNER: May it please the Court, I think that at least in part Mr. Highsaw has helped, — — I mean the first part of his statement, — — has helped to narrow this down to the real issue, and that is whether or not the Brotherhoods have a right to strike solely because of the closing of the North Toledo Yard. * * *

"* * * The railroad asks the Court only that the employees and their representatives be enjoined from striking because of the closing of the yard." (R., p. 10).

On page 17 of the record, we find the following statement by counsel for defense:

"We want to bargain with you about that issue and we want to reach an agreement with you about that issue as to whether you close the yard or not, or if you close the yard maybe give us some other concessions in some other direction."

On page 23 of the record, we find the following statement by counsel for the defendants:

"We are now talking about collective bargaining over the continuance of the operation of the North Toledo Yard and a strike on behalf of the Brotherhoods to require the railroad to bargain with them about that. That is what it really amounts to, because up to now, Your Honor, the railroad has not sat down face to face across a table with these employees, and so much as said one word about this question of maintaining the North Toledo Yard."

On page 29 of the record, we find counsel for the defendants making the following statement:

> "MR. HIGHSAW: It is our position, Your Honor, that as to the authority of the railroad management to effect a physical change, namely, the closing of this yard, that that is a subject which the Brotherhoods have a legal right to negotiate with the management about, aside from these other questions."

On pages 31 and 32, we find the following:

> "THE COURT: (Interposing) Then it is the decision of the Brotherhoods that they want to participate in management problems, is that it?
>
> "MR. HIGHSAW: I say it is the position of the Brotherhoods, given this kind of a problem which they have here, that they can sit down and discuss and negotiate it."

On page 33, we find the following colloquy:

> "THE COURT: If your theory would prevail here, then anytime any railroad would want to make a change in its physical set-up and operation its directors would be required to sit down with the Brotherhoods, and come to an agreement on the propriety of that change; is that the position you are taking?
>
> "MR. HIGHSAW: Yes, Your Honor."

It appears uncontroverted in the record that the plaintiff was ready and willing at all times to discuss, negotiate, mediate or arbitrate with the defendants the problems growing out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard and is still willing to do so at any time that defendants choose to consider the question; it appears further from the record that plaintiff has at all times fully cooperated with and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act. It appears further from the record that the defendants have filed no specific grievances or complaints with the National Railroad Adjust-

ment Board as suggested by the Mediation Board in its telegram of August 1, 1955 (Plaintiff's Exhibit 6), if it was concluded that arbitrary changes covering allocation of services would follow the closing of the Yard.

Assuming that the closing of the Yard does not raise a labor dispute, there appears to be no effective or proper available relief by any administrative agency open to plaintiff on the question of the closing of the Yard.

It is the position of defendants on their motion to dismiss the complaint that, first they have a common law right to strike regardless of any statutes, and particularly the Railway Labor Act, over the proposed closing of the Yard, and, second, that the Norris-LaGuardia Act forbids the Court to enjoin defendants from bringing about a strike or work stoppage.

Section 108 of Title 29 United States Code Annotated, (Norris-LaGuardia Act), reads as follows:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Section 113 (c) reads as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

It is the position of plaintiff that the closing of the North Toledo Yard involves solely a question of manage-

ment decision with which defendants cannot concern themselves, and that if a collateral effect of such closing necessitates a reallocation of the work of certain employees that this presents a separate and distinct question that may later be subject to negotiation, mediation or arbitration.

We are of the opinion that the proposed closing of the Yard is a decision for management alone to make if, in the interest of efficiency of operation, service to the public or meeting competition, management should deem such a step advisable. We can envision any number of situations wherein management would decree a physical change in its method of operations either in its offices, its terminals, on its roadbeds, in its round houses, or in the operation of its trains, wherein the work of certain of its employees would be affected, and see no reason why management should be precluded from making these decisions in the interest of their company as well as of the public. Such decisions have been and are being made by public carriers as a matter of right and without consultation with their employees. To decree otherwise would bring about a violent disruption to our free enterprise system.

We are of the opinion that to initiate a strike that would cause irreparable damage to plaintiff, as well as to the public, on the grounds of a right to sit down and discuss and negotiate with management a proposed change in its physical set-up or its method of operation is placing the right to strike on an invalid ground, a ground that is untenable.

We do not agree with defendants that under the facts before us they have a common law right to strike regardless of statutes, for no permissible purpose appears.

In the case of Dorchy v. Kansas, 272 U.S. 306, at page 311, opinion by Mr. Justice Brandeis, we find the following:

> "The right to carry on business—be it called liberty or property—has value. To interfere with this right

without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. Compare Guaranty Trust Co. v. Green Cove R. R., 139 U. S. 137, 143; Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. Compare People v. Barondess, 16 N. Y. Supp. 436; 133 N. Y. 649. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare Aikens v. Wisconsin, 195 U. S. 194, 204-5."

We do not agree with defendants that plaintiff is precluded by the terms of the Norris-LaGuardia Act from appealing to the equity powers of the Court and seeking an injunction or that the Court, under the terms of the Act, is powerless to enjoin. We come to this conclusion because we believe that there is no labor dispute as defined by Section 113 (c) involved herein. Counsel for defendants have cited a number of cases wherein the Courts have felt bound by the terms and conditions of the Norris-LaGuardia Act after concluding that a "labor dispute" was involved. Typical of these cases is Diamond Full Fashioned Hosiery Co. v. Leader, et al., 20 F.S. 467 (D.C. E.D. Pa., decided September 10, 1937).

This is an opinion by District Judge Maris, now of the Court of Appeals, in which he decides that a hosiery company suit to enjoin a hosiery workers' union from picketing a closed mill of another hosiery company claimed to have locked them out of employment, from interfering with

a shipment to plaintiff of machines purchased from the second hosiery company is one involving or growing out of a labor dispute, and comes within the purview of the Norris-LaGuardia Act and he, therefore, declined to issue an injunction.

In this case there was no public carrier involved, no administrative procedure available for the settlement of the dispute such as the Railway Labor Act in the instant case, and there was no vital public interest at stake in determining the issue.

Courts are more concerned where the public interest is at stake in an effort to safeguard that interest.

In the case of Virginian Railway Co. v. System Federation No. 40, et al., 300 U.S. 515, at page 552, an opinion by Mr. Justice Stone, we find the following:

> "More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. Pennsylvania v. Williams, 294 U.S. 176, 185; Central Kentucky Gas Co. v. Railroad Commission, 290 U.S. 264, 270-273; Harrisonville v. W. S. Dickey Clay Co., 289 U.S. 334, 338; Beasley v. Texas & Pacific Ry. Co., 191 U.S. 492, 497; Joy v. St. Louis, supra, 47; Texas & Pacific Ry. Co. v. Marshall, 136 U.S. 393, 405-406; Conger v. New York, W. S. & B. R. Co., 120 N.Y. 29, 32, 33; 23 N.E. 983. The fact that Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in induc-

ing courts to give relief. It is for similar reasons that courts, which traditionally have refused to compel performance of a contract to submit to arbitration, Tobey v. Bristol, supra, enforce statutes commanding performance of arbitration agreements. Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 119, 121; Marine Transit Corp. v. Dreyfus, 284 U.S. 263, 278."

We conclude, therefore, that the position of plaintiff that there is no labor dispute involved in consideration of the motion to dismiss the complaint is sound, and that the motion ought to be, and is, overruled.

If the motion to dismiss the complaint is overruled, as has been done, defendants press the point that a certain agreement for the allocation of work at the North Toledo Yard entered into by plaintiff and the Michigan Central Railroad Company in the year 1932, and amended in 1948, is being violated, and the conditions thereof changed to the detriment of thirty-five employees involved at the North Toledo Yard, and that this is a direct and natural result of the closing of the Yard, and therefore, taken with the act of management in decreeing the closing of the Yard creates a labor dispute that brings the case within the terms of the Norris-LaGuardia Act and, therefore, precludes the Court from exercising injunctive powers.

The present dispute over yard service had its origin in the absorption by the plaintiff railway company of the operations of the Michigan Central Railroad Company and of the Toledo and Ohio Central Railroad. In 1930, the Michigan Central was leased to the New York Central. It is still operated by plaintiff as a leased line railroad. The Toledo and Ohio Central Railroad Company also became a leased line railroad of plaintiff in 1930 and, on February 13, 1952, it was merged into the plaintiff company.

Prior to 1930, the Michigan Central operated into Toledo from the north and its yard operations in the area were performed in the North Toledo Yard. Work in that

yard was performed by yard service crews employed by Michigan Central, whose job rights were set forth in agreements between the carrier and its employees. The leasing of the Michigan Central Railroad to plaintiff necessitated new agreements between them and their respective employees covering yard service within the Toledo Terminal area. Such agreement was negotiated and signed by the parties effective August 5, 1932 (Defendants' Exhibit J). This agreement was amended to some extent on May 1, 1948 (Defendants' Exhibit K).

After the lease of the Toledo and Ohio Central Railroad Company's lines into Toledo, a working agreement was entered into by plaintiff, whereby a division of work between plaintiff and T. & O. C. employees in connection with the Stanley Yard was effected. That agreement is still in effect.

With the closing of the North Toledo Yard, and the transfer of its activities to the Stanley Yard, a reallocation of the work of the employees at the North Toledo Yard is necessitated and this, of course, results in a clash of interests with employees serving the Stanley Yard.

Defendants feel that this situation raises a labor dispute which is directly attributable to the decision of management to close the North Toledo Yard and, therefore, creates a joint problem in which they have a right to participate and negotiate as a labor dispute in advance of the closing of the Yard.

The New York Central-Michigan Central agreement of August 5, 1932 (Defendants' Exhibit J) contains no requirement that plaintiff maintain the North Toledo Yards either in perpetuity or for any length of time. The agreement does not purport to give the employees a vested right in their jobs nor the right to them or their successors on the jobs of doing the work assigned at the time the agreement was entered into in the accepted fashion or in perpetuity. The Mediation Board found that there was no

agreement binding plaintiff to maintain the North Toledo Yard and, therefore, in effect, concluded that there was no labor dispute involved that would authorize it to assume jurisdiction. It further concluded that arbitrary changes, if any, in the agreement (J & K) would be referable to the National Railroad Adjustment Board. With these conclusions we agree. Defendants at no time asked for any change in the agreements nor for a new agreement, nor did they seek to appeal the decision of the Mediation Board to the National Adjustment Board as suggested by the Mediation Board.

If we concede that defendants are correct in their position that the attachment of the question of the effect of the closing of the North Toledo Yard to the decision of management to close the Yard makes a labor dispute, then we lay open for all time to come a method of circumvention of the designs of the Railway Labor Act whenever a decision of management requires a reallocation of the work of employees. We think that the adoption of such a course would be wrong. The closing of the North Toledo Yard may have the effect of requiring a reallocation of the work of thirty-five employees. If and when it does, that issue can and must be met, and it must be met in compliance with the requirements of the Railway Labor Act. The closing of the Yard as decreed by management is the initial step—that comes first. If and when the interests of the employees require attention as a result of the closing, then under the terms of the Railway Labor Act plaintiff and defendants are required to negotiate and, if necessary, carry the problem to the National Adjustment Board. We are not here concerned with the rights of the parties following a decision of the National Adjustment Board should the problem reach and require its attention.

We believe that a labor dispute cannot be found over the closing of the North Toledo Yard by seeking to incorporate in that action the anticipatory results upon the em-

ployees. The latter is a separate and distinct problem that may be met when the time arrives.

It is, therefore, the judgment of the Court that defendants have no right in any way to interfere with the closing of plaintiff's North Toledo Yard, and that a permanent injunction issue enjoining the defendants from conducting any strike, work stoppage or any other act of coercion to keep plaintiff from closing its North Toledo Yard.

In arriving at our conclusions we have been aided by the cases of Elgin, Joliet & Eastern Railway Co. v. Burley, et al., 325 U.S. 711 and The Chicago River and Indiana Railroad Company; et al. v. Brotherhood of Railroad Trainmen, et al., 229 Fed. (2d) 926.

Plaintiff may, within ten days, lodge with the Court findings of fact and conclusions of law drawn in accordance with this opinion, and defendants may, within ten days thereafter, file their exceptions or suggested additions thereto.

(signed) Frank L. Kloeb,
United States District Judge.

Toledo, Ohio.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

No. 7493 Civil

Judgment and Decree

Filed: June 4, 1956

The New York Central Railroad Company, Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al., Defendants.

This cause came on to be heard on February 3, 1956, on plaintiff's motion for a preliminary injunction and by agreement of the parties, on its merits, was argued by coun-

sel and considered by the Court upon the evidence, the stipulations, the arguments and the briefs of counsel, and upon consideration thereof, and the Court having made and entered herein Findings of Fact and Conclusions of Law, and in conformity therewith and upon consideration of all of the issues herein, it is declared, ordered, adjudged and decreed that the plaintiff has a right to close its North Toledo Yard and that none of the defendants, nor any persons acting by, through or for them, or on their behalf, have any right in any way to interfere with the closing of said North Toledo Yard.

It is further ordered, adjudged and decreed that the defendants, and each of them and anyone acting by, through or for them, or on their behalf, be and they hereby are permanently enjoined and restrained from conducting any strike, work stoppage or any other act of economic coercion to keep or prevent plaintiff from closing its North Toledo Yard.

It is further ordered, adjudged and decreed that plaintiff have and recover from defendants, its costs herein expended.

Frank L. Kloeb,
Judge

Approved:

Doyle, Lewis & Warner
Milo J. Warner
D. L. Sears
W. A. Wilkinson
Attorneys for Plaintiff

Approved:

.....

.....

Attorneys for Defendants

It is certified that copies of the proposed Judgment and Decree filed herewith, have been furnished to opposing counsel.

D. L. Sears, Of Counsel
for Plaintiff

APPENDIX C

(Filed June 14, 1957)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12983

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants*,

v.

THE NEW YORK CENTRAL RAILROAD COMPANY, *Appellee*.

APPEAL from the United States District Court for the Northern District of Ohio, Western Division

Decided June 14, 1957

Before MARTIN, McALLISTER and STEWART, Circuit Judges.

McALLISTER, Circuit Judge. The New York Central Railroad Company brought an action, seeking to enjoin the Brotherhood of Railroad Trainmen, a union, from conducting a strike because of the closing of one of the railroad yards, by the company, at Toledo, Ohio, and further asking for a declaratory judgment that the union had no right to interfere with the closing of the yard. The district court, after a hearing, in findings of fact, conclusions of law, and in a comprehensive opinion by Judge Kloeb, held that no labor dispute was involved, and granted the injunction sought, on the ground that such a strike would cause irreparable damage to the railroad, as well as to the public. *New York Central Railroad Company* v. *Brotherhood of Railroad Trainmen, et al.*, 140 F. Supp. 273.

The facts, insofar as pertinent to this controversy, are as follows: The strike was called to protest the closing of one of plaintiff's railroad yards. The National Mediation Board, which had sought to mediate in the case, found that there was no agreement between the carrier and any organization requiring the maintenance of the yard in question; that no request had been made, by the union, for such an agreement; that in the absence of such an agreement, the Board did not have jurisdiction; and that if any arbitrary changes were made in agreements covering allocation of services of the employees, such action would constitute a violation of those agreements, and would be referable to the National Railroad Adjustment Board. The district court, thereafter, found that there was no "labor dispute" between the parties; that, because of that fact, the Norris-LaGuardia Act, 29 U. S. C. A., Sec. 113, was not applicable, as that statute only came into operation to prohibit, under certain circumstances, injunctive relief in a labor dispute; and that the controversy giving rise to the instant case was not a labor dispute as defined in that Act.

Appellant union submits that the court erred in finding that the dispute between the parties did not involve a labor dispute within the meaning of the Railway Labor Act, Title 45 U. S. C. A., Sec. 151, et seq.; and that it further erred in finding that the controversy did not involve a labor dispute within the meaning of the Norris-LaGuardia Act, and that such Act did not bar injunctive relief in the instant case; and that the court erred in holding that appellee had no effective administrative remedy available to prevent the threatened strike; and that the district court did not have jurisdiction over the subject-matter of the action.

As to the question of irreparable damage, the uncontroverted evidence disclosed that uninterrupted services of the employees represented by the defendant Brother-

hoods are essential to the operation of plaintiff railway company; that the stoppage of operations would cause plaintiff thousands of dollars of damages daily, would require it to lay off approximately 2,516 employees in the Toledo terminal area, resulting in a total wage loss to said employees in excess of $34,800.00 for each day of said strike; that plaintiff would be compelled to embargo shipments into and out of the Toledo terminal area, thus depriving 207 industries in Toledo and vicinity of service by rail by plaintiff railway and would prevent interchange by plaintiff with The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, the Chesapeake and Ohio Railway Company, the New York, Chicago and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, which serve 228 industries in Toledo and vicinity; that transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day, would be halted; that such strike would paralyze all operations of plaintiff between Toledo and all points on its Western District, being the principal lines of the plaintiff running from Buffalo to Chicago, and from Toledo to Charleston, West Virginia, necessitating the laying off of approximately 16,361 employees in addition to the employees of the Toledo terminal area, resulting in a total daily wage loss to said employees of approximately $231,575.00; that, in addition, it would seriously disrupt passenger operations and schedules of The Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company which use plaintiff's Cleveland Union Terminal, and would necessitate the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00; that such strike would seriously disrupt passenger train operations of The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company,

and the Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo and those of the Grand Trunk Railway System, which uses plaintiff's South Bend, Indiana, passenger station, those of The Pennsylvania Railroad Company, which uses plaintiff's Erie, Pennsylvania, passenger station and those of The New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago; that it would seriously affect the passenger and freight operations of other railroads which have and use trackage rights over certain sections of the Western District, as well as the operations of connecting carriers; that it would stop service to approximately 2,180 industries located on the Western District, many of which are engaged in the manufacture of goods essential to our economy; that it would stop service to approximately 110 industries which do not have side-track connections but which utilize plaintiff's team track facilities at various locations in its Western District; that it would prevent plaintiff's Eastern District, being the principal lines between Buffalo and Boston, from receiving cars from or delivering cars to plaintiff's lines in its Western and Northern Districts, which would necessitate disruption of train service in the plaintiff's Eastern District and result in laying off of numerous employees who would suffer a substantial wage loss.

We proceed first to ascertain whether, under the Railway Labor Act or the Norris-LaGuardia Act, the controversy arising out of the railroad's closing its yard, constituted a labor dispute; whether under the circumstances of this case, the district court was barred by the provisions of the foregoing statutes, from issuing an injunction against the strike; whether the railroad had failed to resort to the administrative remedies available to it, to prevent the strike; and whether the district court had jurisdiction of the subject-matter of the action.

In calling the strike to protest against the closing and abandonment of one of the railroad's yards, the union was not seeking to exercise any labor rights against the railroad. True, the union objected because work would thereafter be reallocated among the employees of the yard in question. But the objection to the closing of the yard, concerning which there was no agreement between the railroad and the employees represented by the union, was, in our opinion, not a labor dispute within the meaning of the provisions of the Norris-LaGuardia Act. If the closing of the yard required a reallocation of the work of certain employees any controversy in this regard could be taken care of in accordance with the requirements of the Railway Labor Act. Under the provisions of that statute, both the railroad and the union are required to negotiate, and, if necessary, submit their differences to the National Railroad Adjustment Board. As Judge Kloeb remarked in his opinion: "We believe that a labor dispute cannot be found over the closing of the North Toledo Yard by seeking to incorporate in that action the anticipatory results upon the employees. The latter is a separate and distinct problem that may be met when the time arrives."

It is not every dispute between an employer and employees that justifies the right to strike. In *Dorchy* v. *Kansas*, 272 U.S. 306, 311, Mr. Justice Brandies, in discussing the circumstances which did not justify a strike said: "The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist

that it be determined only by a court. Compare *Guaranty Trust Co.* v. *Green Cove R.R.*, 139 U. S. 137, 143; *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. Compare *People* v. *Barondess*, 16 N. Y. Supp. 436; 133 N. Y. 649. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." Likewise, it would be unjustifiable for a union to prevail upon its members to strike for a reason unconnected with issues of representation, employment, bargaining or contractual rights. It is contended by the Union that the Railway Labor Act, Title 45 U. S. C. A., Section 151, et seq., is applicable to this case, in a certain respect, and precludes the court from issuing an injunction in this controversy, because of the requirement obliging appellee to exert every reasonable effort to settle the dispute in question with the union; and that such obligation to settle the dispute extends to the point of resorting to arbitration. The Railway Labor Act, insofar as pertinent to the argument of the union, provides machinery for the settlement of labor disputes. A "major dispute," as that phrase is known in the parlance of the Railway Labor Act, results when there is disagreement in the bargaining process for a new contract. A "minor dispute" is a controversy over the meaning of an existing collective bargaining agreement in a particular fact situation. The Norris-LaGuardia Act has been held to prevent the issuance of an injunction in a railway labor case involving a so-called "major dispute." *Brotherhood of Railroad Trainmen* v. *Toledo P. & W. R.R. Co.*, 321 U. S. 50. In such a case, of course, the Railway Labor Act does not provide a process for a final decision like that of the Adjustment Board in a "minor dispute" case. A minor dispute may be sub-

mitted to the National Railroad Adjustment Board by either party, and the award of the Board is final and binding on both parties; and a federal court can compel compliance with the provisions of the Railway Labor Act to the extent of enjoining a union from striking to defeat the jurisdiction of the adjustment Board, notwithstanding the provisions of the Norris-LaGuardia Act, since the two Acts are to be read together and the provisions of the Railway Labor Act cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen, et al.* v. *Chicago River and Indiana R.R. Co., et al.*, . . . U. S. . . ., (Decided March 25, 1957).

Here we are confronted by neither a major nor a minor dispute, within the meaning of the Railway Labor Act, nor any labor dispute within the meaning of either the Railway Labor Act or the Norris-LaGuardia Act. Since, in the instant case, there is no labor dispute involved, neither the Railway Labor Act nor the Norris-LaGuardia Act are applicable. Thus appellant's contentions that appellee should have exhausted the administrative remedies available to it in such a case, or resorted to arbitration is without merit, since such remedies are available only in cases involving labor disputes. Appellee has no administrative remedy to which it may resort, and is not required to arbitrate complaints which do not constitute "labor disputes." The provisions of the Railway Labor Act, 45 U. S. C. A. 152, First and Second, making it the duty of all carriers to settle all disputes arising out of the application of agreements concerning rates of pay, rules, and working conditions, or otherwise, does not require a carrier to arbitrate controversies that are not labor disputes, as contended by the union. As has been pointed out, the above provision of the statute recognizes two types of disputes arising between railway management and employees which may be adjusted thereunder, the first relating to disputes over formation of collective

bargaining agreements or efforts to secure them, looking to the acquisition of rights for the future, and the second, contemplating existence of a collective agreement or a situation in which no effort is made to change terms of employment and dispute, relates either to meaning or proper application of a particular provision with reference to a specific situation, or to an omitted case. *Murphree v. Brotherhood of Railroad Trainmen*, 173 Pac (2d) 926, 197 Okla. 627. "Broadly, the statute as amended marks out two distinct routes for settlement of two classes of dispute, respectively, each consisting of three stages. The Act treats the two types of dispute alike in requiring negotiation as the first stage towards settlement, and therefore, in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes." *Elgin, Joliet & Eastern Railway Co. v. Burley, et al.*, 325 U. S. 711, 724. The provision of the Railway Labor Act, above mentioned, does not contemplate any obligation on the part of the carrier to settle or arbitrate a controversy with a union that does not constitute a labor dispute. Neither the Railway Labor Act nor the Norris-LaGuardia Act bars the issuance of an injunction in the instant case.

We come then to appellant's contention that the district court did not have jurisdiction of the subject-matter of the action.

Many aspects of jurisdiction in similar cases have been ably discussed in *Toledo P. & W. R.R. v. Brotherhood of Railroad Trainmen, et al.*, 132 F. (2d) 265, (C. C. A. 7). In that case, a railroad had secured an injunction from the district court restraining a union from interfering with it by violence or threats of violence. The union had submitted among other defenses, that the fact that Congress had paramount power to legislate, in certain

fields, was not alone sufficient to confer jurisdiction on the district court simply because the railroad was an interstate carrier; and that the mere circumstance that interstate commerce was involved, and might be affected, were not sufficient to establish the jurisdiction of the court of a private suit seeking protection of such commerce. These are similar to the contentions that were raised by appellant union in the instant case on the question of jurisdiction. All of the objections to the jurisdiction of the district court in the *Toledo* case were the same as those of appellants in the present case, and were so ably and cogently stated and supported in a dissenting opinion by Judge Minton, later Mr. Justice Minton of the Supreme Court, that we freely draw upon his views in discussing the problem, in advance of our reference to the prevailing opinion of the court in that case. In his dissent, Judge Minton, at the outset, said that jurisdiction depended upon whether or not the controversy arose under the Constitution or laws of the United States, and that it was not a question whether Congress could have taken cognizance of that kind of controversy. The question, Judge Minton emphasized, was rather whether or not Congress had taken such cognizance. "To give jurisdiction," he declared, "the controversy must arise under the Constitution or laws of the United States." In the case before him he concluded that the controversy was based on the claim that the plaintiff had the right to conduct its business of interstate carrier free from interference and violence at the hands of its striking employees; that such right did not stem from the Constitution or any law of Congress and did not arise out of the interstate character of the business; that the right violated was a common-law right given by a state, and other states, through which the plaintiff's road ran, and could have been enforced in any one, or all, of such states. Judge Minton further declared that the fact that the plaintiff was engaged in

interstate commerce, and that some federal statutes imposed some duties pertaining thereto, was of no consequence on the issue of jurisdiction, and that such matters were only incidental. "A case, whose correct decision depends upon the construction of the Constitution or laws of the United States," said Judge Minton, "is what gives jurisdiction. The case at bar depends upon no construction of any part of the Constitution or laws of the United States. It seeks only the enforcement of a common-law right. . . . The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another, . . .' 'A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of such a law upon the determination of which the result depends," citing *Gully* v. *First National Bank*, 299 U. S. 109, 112, 114. Judge Minton concluded his comprehensive opinion on the question of jurisdiction by observing that *McGoon* v. *Northern Pacific Ry. Co.*, 204 F. 998, 1001, 1005, laid down the proper rule: "When the complaint shows a case which arises out of a contract or a common-law right of property and only indirectly and remotely depends on federal law, such a case not only does not, but cannot properly, turn upon a construction of such law." Judge Minton considered, in the *Toledo* case, that the court was without jurisdiction, and that the case should be dismissed.

In the prevailing opinion of the court in *Toledo P. & W. R.R. Co.* v. *Brotherhood of Railroad Trainmen*, the Court of Appeals, speaking through Judge Lindley, after commenting on the provisions of the Interstate Commerce Act, 49 U. S. C. A., Sec. 1, et seq., went on to say that "From these provisions and others, it is clear that

a carrier in interstate commerce is bound, not only to furnish carrying facilities for anyone desiring them, but to supply 'necessary, proper, adequate and sufficient facilities.' " The court stated that, because of the activities of members of the union, the plaintiff was rendered unable to furnish such facilities and was delayed and prevented from operating. "Congress," said the Court, "has seen fit to impose certain duties upon a common carrier engaged in interstate commerce, and the failure to perform such duties subjects the carrier to liability. It cannot be that Congress imposed duties, and yet intended that the carrier should be denied federal relief from interference with carrying out such duties. Congress, having set up certain requirements which the carrier must meet, when others seek by violence to prevent it from meeting those statutory obligations, it should be permitted to seek protection in a court of equity of the sovereignty imposing the obligation." Further observations of the court are illuminating. It was remarked that in suits "arising under the Constitution or laws of the United States, or Treaties made, or which shall be made, under their authority," the proceedings of the Constitutional Convention had manifested "a settled purpose to include within the federal judicial jurisdiction all 'questions which involve the national peace and harmony' and that the word 'questions' includes every issue capable of a judicial determination;" and that the claim of the protection of the federal law, requiring its construction, or of a right or privilege given by a federal law, makes a federal question. The court declared that in cases where a federal statute imposes upon a private party, duties and obligations to be performed, the courts quite generally have approved jurisdiction in the district court of suits brought by such parties to prevent interference with the performance of their obligations under the federal statutes and under the Commerce Law; and that if interstate commerce traffic is hindered, delayed

and burdened to such extent as to amount to unlawful interference with such commerce, a cause of action exists calling for equitable relief. It was, therefore, held that the district court had jurisdiction of the subject-matter of the suit, or of the complaint praying for an injunction against the strike. Certiorari was thereafter granted by the Supreme Court in the *Toledo* case, and the judgment reversed on other grounds, the court expressly pretermitting the jurisdictional issue. *Brotherhood of Railroad Trainmen* v. *Toledo P. & W. R.R. Co.*, 321 U.S. 50, 54.

On this appeal, counsel for appellee, in support of their contention that the district court had jurisdiction of the subject-matter of the action, refer to the opinion of Mr. Justice Frankfurter in *Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437, 450, in which it is said:

> "Almost without exception, decisions under the general statutory grants of jurisdiction strikingly similar to the constitutional wording, have tested jurisdiction in terms of the presence, as an integral part of plaintiff's cause of action, of an issue calling for interpretation or application of federal law. (*Gully* v. *First Nat. Bank in Meridian*, 299 U. S. 109, 57 S. Ct. 96, 81 L. Ed. 70.) Although it has sometimes been suggested that the 'cause of action' must derive from federal law, *it has been found sufficient that some aspect of federal law is essential to plaintiff's success. (American Well Works Co.* v. *Layne & Bowler Co.*, 241 U. S. 257, 260, 36 S. Ct. 585, 586, 60 L. Ed. 987. *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577.) *The litigation-provoking problem has been the degree to which federal law must be in the forefront of the case and not be remote, collateral or peripheral.*"

We are of the view that the district court had jurisdiction of the subject-matter of the action, and that, on its finding that the strike would result in irreparable injury to the public and to the railroad, it properly issued the

injunction. In arriving at this conclusion, although recognizing the forceful reasoning in the dissenting opinion, we concur in the views expressed on the jurisdictional issue, in the prevailing opinion in *Toledo P. & W. R.R. Co.* v. *Brotherhood of Railroad Trainmen*, supra, the conclusion therein being supported by numerous authorities. Some of the earlier cases are instructive in this regard. Of course they had their inception at a time long before the Railway Labor Act, with its beneficent provisions for the protection of railway employees, was conceived, and before the enactment of the Norris-LaGuardia Act, which protected employees, in general, engaged in interstate commerce in their right to strike in controversies involving labor disputes. But where a labor dispute does not exist, and where neither the Railway Labor Act nor the Norris-LaGuardia Act apply, which we here consider to be the case, and the court is confronted with the issue of federal jurisdiction to enjoin interference with interstate commerce, what has been formerly held, on the jurisdictional issue, is apposite. In *Toledo A. A. & N. M. Ry. Co.* v. *Pennsylvania Co.*, 54 F. 730, Judge Taft, later Chief Justice Taft, sitting in the Circuit Court, held that the federal courts had jurisdiction of a bill in equity to restrain violations of the Interstate Commerce Act, to the irreparable injury of the complainant because of the subject-matter and without regard to the citizenship of the parties. In that case the Chief Executive of the Brotherhood of Locomotive Engineers was enjoined from promulgating any rule or order of the Brotherhood causing its members to refuse to receive, or handle and deliver, any freight cars in the course of transportation from one state to another, to the complainant, and to refuse to receive and handle such freight cars which had been hauled over complainant's road. Counsel for the defendants had contended that the interstate commerce law was only declaratory of the common law, which gave the same rights to complainant, and that

therefore, the case was not one of federal jurisdiction. Judge Taft observed that the bill invoked the chancery power of the court to protect the complainant in rights which it claimed under the interstate commerce law, which was passed by Congress in the exercise of the power conferred on it by the federal constitution to regulate commerce among the several states. "It is sufficient," said Judge Taft, "that congress, in the constitutional exercise of power, has given the positive sanction of federal law to the rights secured in the statute, and any case involving the enforcement of those rights is a case arising under the laws of the United States." In *Wabash R. Co.* v. *Hannahan*, 121 F. 563 (C. C. Mo.), it was held that a bill filed to enjoin railway employees from interferring, by a strike, with interstate commerce, was within the jurisdiction of the federal court. In the case of *In re Lennon*, 166 U. S. 548, a bill in equity had been filed to enforce compliance with the Interstate Commerce Act, and to enjoin the employees of a railroad company from refusing to receive from complainant railroad, freight cars for transportation over the lines on which such employees were working. The court held that the bill of complaint exhibited a case arising under the Constitution and laws of the United States, as it appeared to have been brought solely to enforce compliance with the provisions of the statute, and to compel defendant railroad and its employees to comply with such act by offering proper and reasonable facilities for the interchange of traffic with complainant, and enjoining them from refusing to receive from complainant, for transportation over the other company's lines, any cars which might be tendered them. The court said that "a case arises under the Constitution and laws of the United States whenever the party plaintiff sets up a right to which he is entitled under such laws, which the parties defendant deny to him, and the correct decision of the case depends upon the construction of such laws. As was said in *Tennessee*

v. *Davis*, 100 U. S. 257, 264: 'Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted.'"

In the instant case the carrier sought protection from interference with its right, and the duty imposed by Congress upon railroad common carriers, to furnish facilities for passengers or freight, and to engage in interstate commerce, in the service of the public. Where such interference by strike over a controversy does not involve a labor dispute, and is not within the sanction of law, it may be enjoined to prevent great and irreparable injury to the public and to the railroad.

In this case, in our view, no labor dispute exists. A strike would interfere with appellee as a common carrier of interstate commerce, in the discharge of its duties which are imposed by federal law. The district court had jurisdiction over the subject-matter of the suit. A railroad strike involving a controversy which does not constitute a labor dispute, may be, and properly is, enjoined upon a showing that it will interfere with interstate commerce and result in irreparable injury to the public and to the railroad. As the district court found, the railroad and public are faced with great and irreparable injury. On the findings of the district court, it is our conclusion that the injunction was properly issued. In accordance with the foregoing, the judgment of the district court is affirmed.

STEWART, Circuit Judge, dissenting. "A vast and utterly unjustifiable part of federal litigation concerns only the question of jurisdiction, on which great time and labor and expense are expended before the merits of a question are ever reached."[1] Unjustifiable it may be,

[1] Jackson, Robert H. *The Supreme Court in the American System of Government*, Cambridge, Harvard University Press, 1955, page 37.

but the task of determining whether a controversy falls within the limited jurisdiction of the federal courts is an inevitable part of their judicial function.

In my view federal jurisdiction does not exist in this case. Citizenship of the parties is not diverse. The controversy certainly does not arise under the Constitution, and I cannot perceive that it arises under the laws of the United States. Believing that the complaint should be dismissed for want of federal jurisdiction, I do not reach the merits.

The reasons for my view are substantially the same as those expressed by Judge (later Justice) Minton, dissenting in *Toledo, P. & W. R.R.* v. *Brotherhood of Railroad Trainmen*, 132 F. (2d) 265, 272-274 (7 Cir., 1942). These reasons are fully set out in Judge McAllister's thorough discussion, and there is no point in reparaphrasing them here.

Judgment

(Filed June 14, 1957)

Appeal from the United States District Court
for the Northern District of Ohio

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

SUPREME COURT, U.S.
No. 452
Office - Supreme Court, U.S.
FILED
NOV 4
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, *et al.*,
Petitioners,

v.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion and judgment of the District Court will be found at pages 7a to 26a of App. B to the petition for certiorari. It is reported in 140 F. Supp. 273. The findings of fact and conclusions of law of that Court are printed as Appendix B of this brief, p. 4a to 14a. The opinion of the Court of Appeals, as yet unreported, will be found in App. C, pages 27a to 42a, pet.

JURISDICTION

The judgment of the Court of Appeals was entered on June 14, 1957, and appears in App. C to the petition for certiorari, page 42. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED[1]

1. Was respondent railroad entitled to injunctive relief in the United States District Court from a strike called by petitioner unions to require the railroad to continue the operation of one of its three railroad yards in Toledo, Ohio, when

a. there is no agreement between the railroad and the unions requiring that the yard or other operating facilities be maintained, and no notice or application had been made for such agreement,

b. such strike would seriously disrupt vital interstate commerce to the irreparable injury of both the railroad and the general public,

c. the unions and their members are left free to exercise all available remedies provided by the Railway Labor Act in the settlement of any prospective dispute which might arise from the effect, if any, of such closing, on rates of pay, rules or working conditions or terms or conditions of employment,

d. the railroad was and is ready and willing to discuss, negotiate, mediate or arbitrate any such prospective effect or dispute, and

e. the unions have failed and neglected to file any grievances or complaints with the National Railway Adjustment Board or to file formal notice with the Mediation Board for a rule or agreement covering such operations, which form of relief was suggested to them by the Mediation Board?

Embraced in the above inclusive question are the questions

[1]We are constrained to respectfully object to petitioners' statement of questions presented in that they are based upon conclusions and assumptions not supported by the facts nor are they such as were presented to the Court of Appeals.

1. Does the controversy concerning solely the closing of railroad's yard constitute a labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act?

2. Under the circumstances of this case, was the District Court barred by the provisions of the foregoing statutes from issuing an injunction against the strike?

3. Was effective relief by law or by an administrative agency available to railroad respondent to prevent such strike?

4. Did the District Court have jurisdiction of the subject matter?

STATEMENT

Respondent railroad brought this action in the United States District Court for the Northern District of Ohio, Western Division, to enjoin the petitioner brotherhood railroad unions and their officers from conducting a strike on railroad's lines West because of the closing of the North Toledo Interchange Yard of such railroad, and for a declaratory judgment that said unions have no right to interfere with the closing of the yard.

The complaint (R. 7-19) alleged that the "action arises under the laws of the United States regulating interstate commerce," and the jurisdiction of the court "is more specifically invoked as set forth hereinafter in paragraphs 21 and 26" (R. 9) and that the parties "are subject to the Railway Labor Act, the general purposes of which are stated in General Purpose (1) of Section 2 of the Railway Labor Act: 'to avoid any interruption to commerce or to the operation of any carrier engaged therein' " (R. 10). Paragraph 26 (R. 17) of the complaint alleged that, "by reason of the matters hereinabove set forth, the plaintiff is

entitled to immediate temporary injunctive relief against the defendants; to permanent relief *** under the Federal Declaratory Judgment Act, U.S.C., Title 28, Sections 2201 and 2202, and 49 U.S.C. 1 et seq. (Interstate Commerce Act), and other laws of the United States".

The complaint set forth the events leading up to the calling of the strike and alleged in detail extensive irreparable damage to the railroad and the general public. (R. 15-17) The matter was heard by the District Court, which granted the injunction enjoining and restraining defendant unions from striking to prevent plaintiff railroad from closing its North Toledo Yard and adjudging and decreeing that they have no right to interfere with such closing. (R. 59-60) The District Court gave a written opinion (pp. 7a-25a, App. B pet.) and based thereon made comprehensive findings of fact and conclusions of law.[1] (pp. 4a to 14a, App. B this brief R. 48-58.) The findings are clear, comprehensive and entirely supported by the evidence. They establish all allegations of the complaint. On appeal, the majority of the Court of Appeals affirmed the judgment of the District Court in a written opinion (pp. 27a-42a of App. C pet.) Circuit Judge Stewart dissented on the ground the District Court did not have jurisdiction of the subject matter.

The chief pertinent facts[2] are: For many years respondent has operated railroad yards in and in the vicinity of Toledo, Ohio. Its North Toledo Yard, prior to 11 o'clock P. M. on January 21, 1956, was operated and used for the receipt and interchange of freight cars from three other railroads. Respondent for many years had operated an-

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[1]Which petitioners entirely disregard in their petition excepting only for a very minor reference on page 5 of such petition.

[2]Found and established by the District Court in its finding of facts. (App. B this brief).

other yard, known as Stanley Yard just outside Toledo in Wood County, Ohio. (p. 6a App. B, R. 51)

On June 7, 1955, respondent notified its employees in writing that on July 10, 1955, it would close its yard operation in its North Toledo Yard, and the interchange point with the other railroads would be changed from the North Toledo Yard to the Stanley Yard. On June 11, 1955, and July 7, 1955, respondent's officials and certain officers of the petitioning unions held meetings at which the closing of the North Toledo Yard and its effect on approximately thirty-five men there employed was discussed (pp. 6a, 7a, App. B, R. 51)

On July 7, 1955, the unions made application to the National Mediation Board for mediation services, stating that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. (Findings of Fact, p. 7a, App. B, this brief, R. 51-53) The Mediation Board intervened and found that there was no agreement between the respondent carrier and any organization requiring the maintenance of the yard in question; that no request had been made by the unions for such agreement; that in the absence of such an agreement, the Board did not have jurisdiction; and that if any arbitrary changes were made in agreements covering allocation of services of the employees, such action would constitute a violation of those agreements and would be referable by the unions to the National Railroad Adjustment Board. (Findings of Fact, p. 9a, App. B, this brief, R. 51-55; Op. Court of Appeals, p. 28a App. C, pet.)

The District Court found that the strike ordered by unions was called to require railroad to continue the operation of its North Toledo Yard, and that such dispute does not involve terms or conditions of employment. (Findings of Fact, par. 22, p. 11a, App. B, this brief; R. 55)

The District Court found that the *respondent carrier* was ready and willing at all times to discuss, negotiate, mediate or arbitrate with petitioning Brotherhoods the problems which may grow out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard operation and *fully cooperated with and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act.* (Findings of Fact, p. 11a App. B this brief; R. 56; Op. District Court, R. 41, p. 17a App. C pet.)

The trial court also found that the petitioners did not file any specific grievances or complaints with the National Railroad Adjustment Board as suggested to them by the Mediation Board, and that *no effective relief by any administrative agency is available to respondent railroad.* (Findings of Fact and Conclusions of Law, pp. 11a, 14a, App. B this brief; R. 56; Op. District Court, pp. 17a, 18a, App. C pet.) The Court of Appeals specifically affirmed such conclusion and finding. (C. of A. Op. p. 33a, App. C pet.)

The District Court further found that no labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act exists between the parties with respect to the right of the railroad to close its North Toledo Yard. (Findings of Fact and Conclusions of Law, p. 14a, App. B this brief; R. 58). This was specifically affirmed by the Court of Appeals. (C. of A. Op. p. 31a, App. C pet.)

The evidence regarding irreparable damage to both the respondent railroad and the general public is specific, comprehensive and uncontroverted. It establishes as the District Court found (Findings of Fact, pp. 12a, 13a App. B this brief and R. 56-57; also see C. of A. Op. pp. 28a-30a App. C pet.) that the strike ordered by petitioning Brotherhoods would if it transpired cause:

The laying off of approximately 2,516 employees

in the Toledo terminal area, resulting in wage loss to employees in excess of $34,800.00 for each day of such strike.

Embargo of shipments into and out of the Toledo terminal area, depriving 207 industries in Toledo and vicinity of service by rail, by respondent railroad.

The prevention of interchange by respondent with The Baltimore and Ohio Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railroad Company, the New York, Chicago, and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, serving 228 industries in Toledo and vicinity.

The prevention of transportation of mail by rail into and out of Toledo through railroad's Central Union Terminal, approximating 15,582 sacks per day.

The paralysis of all operations of said railroad between Toledo and all points on its Western District, being its principal lines from Buffalo to Chicago, and from Toledo to Charleston, W. Virginia, necessitating the laying off of approximately 16,361 employees in addition to those mentioned in the Toledo Terminal area, resulting in a total daily wage loss to said employees during each day of such strike in the approximate amount of $231,575.00.

The disruption of passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use Cleveland's Union Terminal, and the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00.

The disruption of passenger train operation of

The Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railroad Company, and The Wabash Railroad Company, which use respondent's Central Union Terminal at Toledo. Also disruption of the passenger train operations of the Grand Trunk Railway System which uses respondent's South Bend, Indiana, passenger station, and also those of the Pennsylvania Railroad Company which uses railroad's Erie, Pennsylvania passenger station, and also those of the New York, Chicago and St. Louis Railroad Company, which uses respondent's LaSalle Street Station and trackage at Chicago, Illinois.

The impediment of passenger and freight operations of other railroads which have and use trackage rights over certain sections of said Western District, and also the operations of connecting carriers.

The stoppage of service to approximately 2,180 industries located on said Western District of respondent's railroad, many of which are engaged in the manufacture of goods essential to our economy.

The stoppage of service to approximately 110 industries which do not have sidetrack connections, but which utilize railroad's team track facilities.

Accordingly the District Court found that irreparable damage would be caused both the railroad and the general public by such strike (D.C. Op. pp. 12a-14a, and C. of A. Op. pp. 28a-30a, App. C pet; R. 36-38, also p. 14a App. B, this brief).

REASONS FOR DENYING WRIT

It is respectfully submitted the writ should be denied for the following reasons:

1. There is no question of federal law which has not been but should be settled by the Supreme Court.

2. The decisions and judgments of the District Court and Court of Appeals are not in conflict with applicable decisions of the Supreme Court.

3. They are not departures from the accepted and usual course of judicial proceedings.

4. They are not such as call for the Supreme Court's power of supervision.

ARGUMENT

1. *Any controversy over the closing of the North Toledo Yard is not a labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act.*

2. *Rather it is one over which petitioners do not have the right to strike due to the circumstances of the case and the respective duties of the parties under the Railway Labor Act and Part I of the Interstate Commerce Act.*

There are two distinctly separate matters for consideration.

The first is the closing of the North Toledo Yard.

The second, the effect, if any, upon rates of pay, rules, or working conditions or terms or condition of employment, of railroad employees collectively represented by the petitioning Brotherhoods.

The first is for the determination of railroad management. The second is not before the Court.

The railroad asked and the District Court granted an injunction enjoining petitioners from striking solely because of the closing of the yard (R. 17, 18, 59, 60, 71, 73).

The injunction granted in no way forecloses the petitioners from any disputes which might arise from the second matter above stated. There is no rule or agreement requiring the maintenance of the yard in question or other operating facilities, either in perpetuity or for any length of time (R. 55), and no request for such rule or agreement had been made by petitioners (R. 53, 165-172).

The strike ordered and called by the unions was so threatened and called to require the railroad to continue operation of its North Toledo Yard (R. 55). The dispute actually in the case (the first matter above set forth) does not involve terms or conditions of employment (R. 56).

The railroad was and is ready and willing to discuss, negotiate, mediate or arbitrate any dispute relating to rates of pay, rules or working conditions or terms or condition of employment, which might arise from the closing of the yard (R. 56).

In actual effect, petitioners would not mediate, negotiate or arbitrate anything for they consistently followed the course that, if the yard was closed they would strike. Furthermore, that is just what happened for on two different occasions the railroad announced a closing and on two different occasions, the Brotherhoods called a strike (R. 159, 160, 163, 164), even though the railroad was willing to discuss and negotiate any labor questions arising from the closing (R. 56).

The Brotherhoods maintained that they have the right to tell the railroad whether or not it may close its yard, entirely "aside from" any labor questions (R. 80).

As the District Court so well stated in its opinion, such action "is placing the right to strike on an invalid ground, a ground that is untenable" (R. 42).

The Brotherhoods say in their petition (p. 9) that "they have exhausted all remedies available to them under the Railway Labor Act". Respondent most earnestly disagrees. The Mediation Board told the petitioners (R. 53), that,

> "It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement",

and further stated to them (R. 53),

> "Arbitrary changes, if any, in Memorandum Agreements * * * covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board."

The District Court found from uncontroverted evidence that petitioners "filed no specific grievances or complaints with the Railway Adjustment Board as suggested by said Mediation Board" (R. 56, p. 11a App. B, this Brief). Nor did they file any request for a rule or new agreement (R. 165-172). Rather they called the strike which the District Court enjoined.

Petitioners ignored entirely the provisions of the Railway Labor Act, which provide facilities available to them for the settlement of any "labor disputes". The closing of the yard, of itself, does not involve a "labor dispute". The effects of the closing might. All of the effects of the closing which may embrace the elements of a legitimate "labor dispute" come under the administrative remedies and procedures of the Railway Labor Act. The "labor dispute" matters are the proper concern of the Brotherhoods. In the absence of any agreement or rule requiring operation and maintenance of the yard, as is the case here (R. 52, 55), and in the absence of formal notice to the Mediation Board for such a rule or agreement (R. 52), the closing of the yard is solely the business and concern of management. Be-

cause there is made available to the petitioners the facilities for the settlement of all questions concerning rates of pay, rules, or working conditions and all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions, it is the duty of the Brotherhoods to make use of such facilities before striking. To strike, without first making use of such facilities, is a violation of the clear intent and purposes of the Railway Labor Act. To hold otherwise is to hold that it is of no actual effect; that the important substantial amendments of 1934 added nothing to the original acts of 1920 and 1926 and that the petitioning Brotherhoods may disregard the provisions of the 1934 Act with impunity.

The Supreme Court has held in a long line of cases that the federal courts shall enforce and apply the Railway Labor Act and are not prevented from doing so by the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana R.R. Co.*, 353 U.S. .. (March 25, 1957) 1 L. Ed. 2d, 622; *Brotherhood of Railroad Trainmen, et al. v. Howard, et al.*, 343 U.S. 768, 774 (1952); *Graham et al. v. Brotherhood of Locomotive Firemen and Enginemen*, 338 *U.S.* 232-239-240 (1940); *Steele v. L. & N. R. Co., et al.*, 323 U.S. 192 (1944); *Tunstall v. Brotherhood of L. F. & E., et al.*, 323 U.S. 210 (1944); *Virginian Ry. Co. v. System Fed. No.* 40, *etc. et al.*, 300 U.S. 515, 562-563, (1937).

Of significance is a statement by then Representative LaGuardia, one of the co-authors of the Norris-LaGuardia Act, on the House floor in debate on the Railway Labor Act of 1926 which is quoted by the United States Supreme Court in the case of *B. R. T. etc., et al. v. Toledo, P. & W. R. Co.*, 321 U.S. 50, at page 59, (1944), as follows:

> " 'The workers could not and would not think of going on strike before *all the remedies provided in the law* have been exhausted. *If the railroads have com-*

plied, they would not, as has been suggested (by Representative Beck), be deprived of any relief which they may have in law or equity.'" (Emphasis added by Court)

In the present case the District Court found that the respondent railroad had fully complied with "all requirements of the Railway Labor Act" (R. 56, p. 11a App. B, this brief, Findings of Fact).

Of special interest are the two recent decisions of the Supreme Court, *B. of R. T. et al. v. C. R. & I. Rd. Co. et al.*, 353 U.S. . ., 77 S. Ct. 635 (March 1957), and *Manion v. K. C. Term. Ry. Co.*, 353 U.S. . ., 77 S. Ct. 706.

While these cases are not directly in point, they establish applicable basic principles.

They establish the basic principle that the provisions and facilities of the Railway Labor Act in labor disputes can not be ignored or by-passed either by the railroads or their employees acting collectively through their unions before seeking injunctive relief or striking.

In the instant case the respondent railroad "followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act". Petitioners did not. (Findings of Fact R. 56 p. 11a App. B, this brief).

In the *Chicago River* case (supra) the strike was called over twenty-one specific grievances then pending before the Railroad Adjustment Board.

In the *Manion* case (supra) the strike was over specific time claims filed by a large number of engineers and firemen which either the railroad or union could take to the Adjustment Board and which neither did.[1] Also involved were specific proposed changes to agreements, and the railroad had declined to follow the recommendation of

[1] In the present case no specific complaints were filed with the respondent which it could take to the Adjustment Board.

the Mediation Board. It is significant that this Court remanded the *Manion* case without prejudice to reinstate the injunction if disputes are submitted to the Adjustment Board.

In the *Manion* case the railroad could submit the matter to the Board while in the present case it can not. Nor is there a "major dispute" which it could submit to the Mediation Board since no rule or agreement had been requested by petitioners.

We are mindful of foot-note 24 to the Court's opinion in the *Chicago River* case to the effect that in *B. of R. T. etc., et al. v. Toledo, P. & W. R. Co.*, 321 U.S. 50, the Norris-LaGuardia Act was held to prevent the issuance of an injunction in a railway labor case involving a "major dispute", and that in such a case, the Railway Labor Act does not provide a process for a final decision like that of the Adjustment Board in a "minor dispute" case.

It is true the Railway Labor Act does not provide a process for final decision in a "major dispute". In the present case, however, the Brotherhoods did not ask for a new rule or agreement although that was suggested to them by the Mediation Board. Lacking such request, there is no "major dispute" under the Act. (R. 53-55)

It should also be noted that in the *Toledo P. & W. R. Co. case* (supra), the railroad had refused to submit a "long continued labor dispute relating to working conditions and rates of pay" to arbitration and because of that the Court denied it injunctive relief. It indicated rather plainly, however, that had it done so, it would have been so entitled. (321 U.S. 50 at pp. 59-61)

The principle set forth by the *B.R.T. v. Toledo, etc.* case is that if "every reasonable effort * * * either by nego-

tiation or with the aid of any available governmental machinery of mediation or voluntary arbitration" has been made to settle the matter, the complaining party should be entitled to relief.[1] The Court considered at some length the Norris-LaGuardia Act.

To answer the question in the present case whether the Norris-LaGuardia Act prohibits the injunction requires the determination of what constitutes a "labor dispute" under the provisions of that Act, for in order to apply and limit the Court's jurisdiction the controversy before the Court must be a "labor dispute" (29 U.S.C. § 104).

The Norris-LaGuardia Act concerns itself solely with labor disputes. The controversy must concern "terms or conditions of employment".

The present controversy is solely concerning the closing of the yard itself. The unions have not asked the railroad nor the Mediation Board to negotiate or arrange any new agreements to cover terms or conditions of employment. Hence this is not a "labor dispute" and the Norris-LaGuardia Act does not apply.

The Norris-LaGuardia Act, which was enacted two years before the important 1934 amendments to the Railway Labor Act, was not passed to provide against such an injunction as has been asked for and granted in the present case. It was passed to protect against wide usage against labor unions of the Sherman and Clayton Anti-Trust Acts and to curtail the use of so-called "yellow dog" contracts. [S. Rep. 163, and H. Rep. 669, 1st Session, 72nd Congress, particularly pp. 11, 16-18 of S. Rep. 163]. The Senate Report stated, (p. 11), "It is not sought by this bill to take away from the judicial power any jurisdiction to restrain

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[1]The District Court found respondent always ready and willing to negotiate or arbitrate all labor dispute problems growing out of the yard closing (Findings of Fact, p. 11a, App. B this brief).

by injunctive process, unlawful acts or acts of fraud or violence".

None of the cases cited by petitioners on the question of what constitutes a labor dispute involve railroads or the Railway Labor Act.[1]

It is noteworthy that this Court in foot-note 2 to the opinion in the recent important case of *B. of R. T. et al. v. C. R. & I. Rd. Co. et al.*, 353 U.S. . . ., 77 S. Ct. 635, 636, stated:

> "The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act. * * *".

The basic reason is, of course, the direct and important relationship which such industry bears to the public welfare.

Considering the cases presented by petitioners, we first note *Hunt et al. etc. v. Crumboch, et al.*, 325 U.S. 821 (1945) which is not pertinent as it was brought on an alleged violation of the Sherman Act (26 Stat. 209; U.S.C. Title 15, § § 1-7) and in no way involved the Railway Labor Act or a railroad.

United States v. Hutcheson, et al. 312 U.S. 219 (1941) was a criminal case brought under the Sherman Act. The court held a "labor dispute" involved. There was no carrier by rail. *United States v. Carrozo, et al.* 37 F. Supp. 191, (1941) was also a Sherman Act criminal case with no carrier by rail involved. The same was the situation in

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[1]On all other questions petitioners refer to only three railroad cases, e. g., *B. R. T. v. C. R. & I. R. R. Co., B. R. T. v. T. P. & W. R. Co.*, and *Manion v. K. C. Term*, which we have discussed (*supra*).

United States v. International Hod Carriers, etc., et al. 313 U.S. 539, (1941) and *United States v. American Federation of Musicians*, 47 F. Supp. 304 (1942). Neither the Railway Labor Act nor the Interstate Commerce Act was in these cases. *Diamond Full Fashion Hosiery Co. v. Ledder, et al.*, 20 F. Supp. 467, (1937), did not concern interstate commerce by rail or the Railway Labor Act. True it did involve the shutting down of defendant's plant and transferring its machinery from New Jersey to North Carolina which the court held was a "labor dispute" and so within the provision of the Norris-LaGuardia Act.

District Judge Kloeb in commenting on the *Diamond Hosiery* case stated (p. 21a, App. B, pet.), "In this case there was no public carrier involved, no administrative procedure available for the settlement of the dispute such as the Railway Labor Act in the instant case, and there was no vital public interest at stake in determining the issue".

Milk Wagon Drivers' Union Local 753 v. Lake Valley Farm Products, Inc., et al., 311 U.S. 91, (1940), was an action under the Sherman Act. It was against such actions the Norris-LaGuardia Act was specifically passed. It involved a "labor dispute" but in no way concerned interstate commerce by rail, or the Railway Labor Act. *United Electrical Coal Companies v. Rice, et al.*, 80 F. (2d) 1 (1935) (C.C.A. 7, cert. den. 297 U.S. 714), while holding that the term "labor dispute" should be broadly and liberally construed, held that under the facts of that case no "labor dispute" existed. *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, did not involve interstate commerce or the Railway Labor Act.

In considering such cases it is noteworthy that no effective administrative facilities or procedures were available to the employees or their unions as in the Railway Labor Act.

As most cogently stated by the Supreme Court in *B. of R. T. et al. v. C. R. & I. Rd. Co., et al.*, 77 S. Ct. 635, 640-41 (1957),

> "Such controversies (railroad labor) therefore, are not the same as those in which the injunction strips labor of its primary weapon without substituting any reasonable alternative."

3. *No effective relief by law or by an administrative agency was available to respondent to prevent the strike and the resultant irreparable damage.*

The District Court so found (R. 58, p. 14a App. B, this brief). The Court of Appeals affirmed (pp. 32a-34a, App. C, pet.)

We find two statements by petitioners which confuse us (Pet. pp. 18-19). In one they state that the Court of Appeals holds "that the railroad was not required to exhaust *the procedures available under the Railway Labor Act* for settlement of the controversy prior to seeking an injunction *because such procedures do not apply to the dispute* involved" (emphasis supplied) They furnish no specific reference to the Court's opinion to support this statement. As we read the Opinion it clearly affirms the District Court's that the dispute solely over the closing of the yard in question is not a labor dispute and that under the circumstances of the case, there is no effective relief available to the railroad other than the court action taken. In other words, rather than as petitioners put it, there were no remedies available for the railroad to exhaust.

The other confusing statement by petitioners is that the railroad refused to negotiate the dispute. (Pet. 19) There is no such finding of fact. To the contrary the District Court found the railroad was always ready and willing to negotiate or arbitrate all problems relating to work

or labor matters growing out of the yard closing, and that the railroad followed all suggestions of the Mediation Board and all requirements of the Railway Labor Act (R. 56).

Petitioners do not make it entirely clear whether their statement applies to the *sole* question of closing the yard or to the closing and the effects if any of such closing on labor matters. We must assume because of the record that they contend they have the right to strike *solely* because of the closing, entirely separate from any questions regarding terms or conditions of employment, rates of pay, rules or working conditions, as they did at the trial. (R. 80)

The single matter of closing was not a labor dispute as it was separated from questions of terms and conditions of employment (R. 55, 56, 71, 73).

Accordingly, the Mediation Board did not ask the parties to arbitrate this separate question of closing but held it had no jurisdiction and closed its file because there was no agreement requiring continued operation of the yard. The Brotherhoods did not ask for a rule or new or amended agreement, and declined to designate or file with the Railroad Adjustment Board any specific grievances because of any claimed maladjustments or effects upon terms or working conditions by reason of the closing (R. 53, 55, 158-9, 161-2).

The petitioners, completely disregarding the administrative facilities provided by the Railway Labor Act for the settlement of all labor dispute matters which might arise from the closing of the yard, have maintained that the railroad had no right to close its yard and transfer its interchange to another yard, simply saying in effect, "you close, we strike".

Under the circumstances the railroad could not ask for arbitration on the question of closing alone, nor did the Mediation Board ask it to do so. In no way could that furnish any proper effective relief. Nor could the railroad have effectively asked for an Emergency Board. The Mediation Board did not ask for such a Board. The calling of such a Board is left to the full discretion of the President after recommendation by the Mediation Board (45 U.S.C. 160).

Faced with such a situation on a matter not subject to arbitration, which the Mediation Board so found, the railroad's only effective recourse was the District Court.

4. *The District Court had jurisdiction of the subject matter.*

The District Court so held (R. 58). The Court of Appeals with one Judge dissenting held likewise (Opinion, pp. 34a-42a, App. C, pet.).

This case directly affects and concerns the rights and duties of both respondent railroad and petitioner unions under the Interstate Commerce Act and the Railway Labor Act. (49 U.S.C. §§1 et seq; 45 U.S.C. 151-163; also see Judiciary Act, 28 U.S.C. §§1331; 1337). It calls for the interpretation and application of these Acts. It involves protecting interstate commerce from drastic disruption and the public from irreparable harm and injury.

The case arises under the pattern of the United States laws comprised of the Interstate Commerce Act, the National Railway Labor Act and the Norris-LaGuardia Act. (29 U.S.C. §§101-115) It does not arise in a claim for a right to close the North Toledo Yard. The railroad asks for the equitable protection of the court against irreparable dam-

age to it and to the public which would result from the strike.

The Court of Appeals in upholding jurisdiction discussed the question at some length (pp. 34a-42a, App. C pet.) relying to great extent upon the majority reasoning in *Toledo P. & W. R. Co. v. B. of R. T. etc., et al.*, 132 F. (2d) 265 (C.C.A. 7) Circuit Judge Stewart dissented upon the basis of then Circuit Judge Minton's dissent in the *Toledo P. & W.* case.

The Court of Appeals quotes the following pertinent statement from the majority opinion in *Toledo P. & W.*, 132 F. (2d) at p. 269:

> "Congress has seen fit to impose certain duties upon a common carrier engaged in interstate commerce; and the failure to perform such duties subjects the carrier to liability. It cannot be that Congress imposed duties, and yet intended that the carrier should be denied federal relief from interference with carrying out such duties."

Justice Minton's (then Circuit Judge) dissent merits comment. It appears to be based on the proposition that the railroad "seeks only the enforcement of a common law right" (132 F. (2d), at p. 273). *Actually it seeks to safeguard the performance of a duty directly required by Federal law,* i.e., the Interstate Commerce Act and the Railway Labor Act, and by such safeguard preventing irreparable damage to itself and the public.

Then Circuit Judge Minton gives *Niles-Bement-Pond Co. v. Iron Moulders Union, etc., et al.*, 254 U.S. 77, as authority for his position. *In that case however the plaintiff employer owed no duty to the general public required by a specific federal statute.* While its duty was to the U.S. Government it was a duty arising solely by private contract with the government.

It is worthy of note that the other ground for Circuit Judge Minton's dissent, e.g., that in a "labor dispute", where railroad had refused to arbitrate, it had not used every "reasonable effort" to exhaust its administrative remedies, was properly upheld by the Supreme Court. (321 U.S. 50). Also the following statement in Circuit Judge Minton's dissent is significant:

> "The law does not require a futile thing, and if there is a finding to the effect that efforts to negotiate, mediate or arbitrate would be futile, that would be one thing. No such finding is present in the case at bar." (132 F. (2d) at p. 274)[1]

Justice Frankfurter in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437,[2] decided March 28, 1955, said at page 450:

> "Almost without exception, decisions under the general statutory grants of jurisdiction strikingly similar to the constitutional wording, have tested jurisdiction in terms of the presence, as an integral part of plaintiff's cause of action, of an issue calling for interpretation or application of federal law. (Gully etc. v. First Natl. Bank in Meridian, 299 U.S. 109, 57 S. Ct. 96, 81 L. Ed. 70. Although it has sometimes been suggested that the 'cause of action' must derive from federal law, *it has been found sufficient that some aspect of federal law is essential to plaintiff's success.* (American Well Works Co. v. Layne V. Bowler Co., 241 U.S. 257, 260, 36 S. Ct. 585, 586, 60 L. Ed. 987. Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 41 S. Ct. 243, 65 L. Ed. 577.) *The litigation-provoking problem has been the degree to which federal law must be in the forefront of the case and not be remote, collateral or peripheral.*" (Emphasis Supplied)

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[1]See express findings in present case (R. 56, 58, p. 11a, App. B, this brief).

[2]In connection with *Westinghouse case*, see *Textile Workers etc. v. Lincoln Mills, etc.*, 353 U.S. ..., 77 S. Ct. 912, 917-918.

In the present case, the federal law involved is very much in the "forefront" of the case and is in no way "remote, collateral or peripheral".

Justice Frankfurter in his opinion refers to an article by Professor Paul J. Mishkin in 53 *Columbia Law Review*, 157, 196. The following conclusion to this article merits attention:

> "The use of the federal trial courts to protect a congressional program seems no less meet than their use to vindicate a specific federal right. In either area the national concern and policy are first established by congressional action. The balancing of competing values is not left to the predilections of each individual federal—rather than state—court, but is declared, at least generally, by Congress. The protective forum in such circumstances is then, principally, a shield for federal legislation. In a very real sense do all such cases 'arise under' the laws establishing the congressional plan, within the meaning of Article III."

The following cases support the basic jurisdictional principle in the instant case.

Smith v. Kansas City Title & Trust Co. et al., 225 U.S. 180 (1921), 199; *Textile Workers etc. v. Lincoln Mills*, 353 U.S. ..., 77 S. Ct. 912 (1957); *Goodall-Sanford, Inc. v. Textile Workers, etc., et al.*, 353 U.S. ..., 77 S. Ct. 920 (1957); *General Electric Co. v. United Electrical Workers*, 353 U.S. ..., 77 S. Ct. 921 (1957); *Virginian Ry. v. System Federation, etc., et al.*, 300 U.S. 515; (1937); *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, et al.*, 323 U.S. 210, 213; (1944); *City of Dayton, O. v. City Ry. Co.*, 16 F. (2d) 401 (C.C.A. 6) (1926); *W. H. Mount v. The Grand Intl. Brotherhood of Locomotive Engineers*, 226 F. (2d) 604, (C.C.A. 6, 1955, cert. den. 350 U.S. 967); *Thompson, Trustee, Mo. Pac. Ry. Co. etc. et al., v. St. Louis-San Francisco Ry. Co.*, 218 F. (2d) 166, 171 (1954) (C.C.A. 8, cert. den. 348 U.S. 964); *Regents of New Mexico College etc. v. Albuquerque Broadcasting Co.*, 158 F. (2d) 900 (C.C.A. 10)

(1947); *Costanzo Coal Min. Co. v. Weirton Steel Co.*, 150 F. (2d) 929 (1945) (C.C.A. 4, cert. den. 326 U.S. 765); and *Erie R. Co. et al. v. Local 1286, International Longshoremen's Ass'n. et al.*, 117 F. Supp. 157 (U.S.D.C., W.D., New York 1953).

In none of the cases cited by petitioners on the jurisdictional question, was the Railway Labor Act involved. No carriers by *rail* in interstate commerce were parties.

Petitioners do cite three Motor Carrier cases, two in the Federal Courts and one before the Interstate Commerce Commission, but they are not applicable. In the first place Motor Carriers are not under the Railway Labor Act. Further, the provisions of the Motor Carrier Act, Part II of the Interstate Commerce Act (49 U.S.C. § 301 et seq), are not the same as those applicable to carriers by rail, Part I I.C.A. (49 U.S.C. § § 1-300), particularly as to the duties and obligations to serve the public. While generally speaking they have the same general duties, the obligation of carriers by rail is greater. (Cf. 49 U.S.C. § § 304 (a) (1), 316 (a) (b) applicable to motor carriers with 49 U.S.C. § § 1 (4), (14), (15), (21) and § 8 applicable to rail carriers).

In *Lee Way Motor Freight, Inc. v. Keystone Freight Lines, Inc.*, 126 F. (2d) 931, (1942), cited by petitioners, the question was whether the Norris-LaGuardia Act was applicable, and if so it barred jurisdiction. The Court held the matter in controversy a "labor dispute", and accordingly it was without jurisdiction.

East Texas Motor Freight Lines v. International Brotherhood of Teamsters, etc., 163 F. (2d) 10, (1947), also cited by petitioners, was an action to restrain defendant unions on the ground they had entered into an unlawful conspiracy to boycott and in restraint of trade in violation of the Sherman Act. The trial court found no conspiracy and also that the matter grew out of a "labor dispute", and

ccordingly jurisdiction barred by the Norris-LaGuardia Act.

It is submitted that the present case meets the jurisdictional tests set out in the federal statutes and the decisions of the Supreme Court. The subject matter embraces a *substantial* question *directly* raised by the federal statutes hereinbefore referred to, particularly the Interstate Commerce and Railway Labor Acts.

CONCLUSION

The respondent railroad, following all requirements of the Railway Labor Act, was faced with a strike by petitioners, called because of the closing of one of its exchange yards and the transfer of such operations to another yard in Toledo, Ohio, when there was no agreement requiring maintenance of such yard and regardless of the fact that the railroad was ready and willing to negotiate, mediate or arbitrate any matters relating to labor conditions which might result from such closing. The petitioner unions would not file any specific grievances or complaints or request a rule or new agreement as suggested to them by the Mediation Board insisting in effect they had the right to strike solely because of such closing. Such called strike would cause extensive irreparable damage to both the respondent railroad and the general public.

With no effective administrative relief available to it, respondent applied to the local District Court for an injunction against the petitioners striking because of the closing only. After full hearing this was granted. The Court rendered a comprehensive opinion and made specific findings of fact and conclusions of law which support fully the above statements and the order of the District Court. The Court of Appeals properly afffirmed.

It said in concluding its opinion:

"In the instant case the carrier sought protection

from interference with its right, *and the duty imposed by Congress upon railroad common carriers,* to furnish facilities for passengers or freight, and to engage in interstate commerce, in the service of the public. • • •

"In this case, in our view, no labor dispute exists. A strike would interfere with appellee as a common carrier of interstate commerce, *in the discharge of its duties which are imposed by federal law.* The district court had jurisdiction over the subject-matter of the suit. A railroad strike involving a controversy which does not constitute a labor dispute, may be, and properly is, enjoined upon a showing that it will interfere with interstate commerce and result in irreparable injury to the public and to the railroad. As the district court found, the railroad and public are faced with great and irreparable injury. On the findings of the district court, it is our conclusion that the injunction was properly issued." (Emphasis Supplied)

Because the decisions and findings of the District Court and the Court of Appeals are correct under the law and facts, the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Pertinent Provisions of the Judiciary Act

Federal question; amount in controversy

28 U.S.C. § 1331. The district courts have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. (62 Stat. 930.)

Commerce and anti-trust regulations

28 U.S.C. §1337. The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. (62 Stat. 931.)

Applicable Provisions of the Interstate Commerce Act Part I relating to railroads

Regulations in general; car service; alteration of line—Carriers subject to regulation

49 U.S.C. §1 (1) The provisions of this chapter shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment;

• • •

(4) It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; (24 Stat. 379; as amended 48 Stat. 1102; 49

Stat. 543; 54 Stat. 899; 62 Stat. 602; 63 Stat. 485; 66 Stat. 277)

Liability in damages to persons injured by violation of law.

49 U.S.C. §8 In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case. (24 Stat. 382, as amended 49 Stat. 543)

Part II relating to motor carriers

49 U.S.C. §.304 (a)

It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment. [Title I, § 101, 56 Stat. 176]

49 U.S.C. § 316

It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; * * *.

Rates, facilities for carriers of property

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; • • •. [Title I, § 22 (b-d), 54 Stat. 924]

Additional Pertinent Provisions of the Railway Labor Act

Conference of representatives; time, place; private agreements

45 U.S.C. § 152. Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held. (44 Stat. 577; 48 Stat. 1186; 62 Stat. 909; 64 Stat. 1238)

Pertinent Provisions of the Declaratory Judgment Act

28 U.S.C. § 2201. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. (62 Stat. 964; as amended 63 Stat. 105)

Further relief

28 U.S.C. § 2202. Further necessary or proper relief

based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. (62 Stat. 964)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

No. 7493 Civil

Findings of Fact and Conclusions of Law
Filed: June 4, 1956

The New York Central Railroad Company,

Plaintiff,

vs.

Brotherhood of Railroad Trainmen, a Voluntary Association, et al.,

Defendants.

1. The Plaintiff, the New York Central Railroad Company, is a consolidated railroad corporation organized and existing under the laws of the State of Ohio and other states, with places of business in Toledo, Ohio and elsewhere.

2. Prior to January 2, 1930, the Michigan Central Railroad Company operated into Toledo from the North. On January 2, 1930 the railroad and property of the Michigan Central Railroad Company were leased to the plaintiff, and as of the date of the said lease, the New York Central Railroad Company took over the operations formerly conducted by the Michigan Central including the operations from the North to Toledo, and ever since that date, the New York Central has conducted the railroad operations formerly conducted by the Michigan Central. At all times

material herein prior to February 13, 1952, the New York Central operated the railroad and property of the Toledo and Ohio Central Railway Company under lease. On February 13, 1952, the Toledo and Ohio was merged into plaintiff, the New York Central Railroad Company. Following the leasing of the Michigan Central to the plaintiff, a new agreement among the defendants Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Engineers, and the plaintiff, together with other Brotherhoods not parties hereto, effective August 5, 1932, was entered into, reallocating the work between former Michigan Central employees and New York Central employees. This agreement was amended by an agreement dated May 1, 1948.

3. Plaintiff is a common carrier by railroad within the meaning of that term as defined in the Railway Labor Act, U.S.C., Title 45, Sec. 151 et seq., and is engaged in the transportation of property and persons in interstate commerce within the jurisdiction of the District Court of the United States for the Northern District of Ohio, Western Division.

4. The defendants, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, are voluntary organizations and labor organizations within the meaning of the Railway Labor Act. Each of said defendant Brotherhoods consists of a Grand Lodge and many subordinate lodges, and each has its principal office in Cleveland, Ohio.

5. Said Brotherhoods are, and at all times material hereto have been, the recognized and acting collective bargaining representatives for all of plaintiff's employees who are classified as yard-men, switchtenders, baggagemen, brakemen, flagmen, locomotive firemen, helpers on other than steam locomotives, hostlers and hostler helpers.

6. The defendants other than said Brotherhoods are

all officers of said Brotherhoods, or of local lodges thereof, holding the official positions stated in the caption of the complaint herein as amended.

7. The amount in controversy exceeds the sum of $3,000.00 exclusive of interest and costs.

8. The plaintiff in the conduct of its business, employs the classes of employees mentioned in Paragraph 5 above and the plaintiff can not operate its railroad without the performance of the duties performed by said employees, all of whom are members of, or represented by one or the other of the defendant Brotherhoods as their collective bargaining representative.

9. The plaintiff for many years past has operated railroad yards in and in the vicinity of Toledo, Ohio. Its North Toledo Yard, prior to 11 o'clock P.M. on January 21, 1956, was operated and used for the receipt and interchange of freight cars from the Pennsylvania Railroad Company, the New York, Chicago and St. Louis Railway Company, and the Toledo Terminal Railroad Company. Plaintiff also for many years past has operated another yard, known as its Stanley Yard in Wood County, Ohio.

10. The members of said Brotherhoods are so numerous as to make it impracticable to bring them all before the court and this suit is brought against the class of said members.

11. On June 7, 1955, the plaintiff notified its employees in writing that on July 10, 1955, it would close its yard operation in its North Toledo Yard, and that effective as of July 10, 1955, the interchange point with the above mentioned other railroads would be changed from the North Toledo Yard to the Stanley Yard.

12. On June 11, 1955, and on July 7, 1955, plaintiff's officials and certain officers of the defendants held meetings at which the closing of the North Toledo Yard and its

effect on approximately thirty-five men there employed was discussed.

13. On July 7, 1955, defendants sent to the National Mediation Board an application for mediation services under the provisions of the Railway Labor Act and stated therein that the specific question in dispute was that management was arbitrarily closing the North Toledo Yard without negotiations. No request was made in the application for a change in any existing working agreements or for a new or supplemental agreement. On the same day, the Mediation Board wired plaintiff that they had received a telegram from defendants, reading as follows:

> "Serious situation existing New York Central Railroad Lines West at Toledo, Ohio as the result of the management arbitrarily closing North Toledo Yard without negotiations request your Board take immediate jurisdiction over this matter and notify Carrier to hold the matter status quo pending mediation proceedings. Letter follows."

14. On July 8, 1955, defendants filed an application for mediation services by way of a letter, which read in part as follows:

> "Management, The New York Central Railroad Company, Lines West of Buffalo, advised Local Chairman, representing the B. of L.E., B. of L.F. & E., and various other Organizations of their desire to close North Toledo Yard, effective 11:00 P.M., July 10, 1955; closing this yard seriously affects agreements dated August 3, 1932, and May 1, 1948, by disrupting proper allocation interdivisional service between Michigan Central R.R. and The N.Y.C. R.R. Co., Lines West, as set forth in telegram this date."

15. On July 8, 1955, the Mediation Board wired plaintiff as follows:

> "We are advised that New York Central Management proposes to close the North Toledo Yard effective 11 PM, July 10, 1955. BLE and BLF&E state that

service at North Toledo Yard as between Michigan Central and New York Central Lines West engineers is covered by agreement dated August 3, 1932, supplemented by memorandum of understanding effective May 1, 1948 and that closing of North Toledo Yard would seriously affect these agreements by disturbing agreed to allocation of service between the two Committees at Toledo, Ohio. Organizations further claim that carrier has not complied with provisions of Section, Railway Labor Act in failing to serve formal Section 6 notice of their intention to close North Toledo Yard and have applied for Board's mediation services. Without passing on propriety of formal docketing of such applications, we have assigned correspondence file C-2386 to this dispute and Board hereby requests carrier to defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by a Board representative. Please acknowledge and advise if this request will be complied with. Joint Horning, Brown, Gilbert and Kennedy. By direction of National Mediation Board."

Plaintiff wired the Mediation Board on the same day as follows:

"Receipt acknowledged your telegram requesting we defer contemplated closing of North Toledo Yard until matter can be discussed with representatives of carrier and organizations by Board representative. We will comply with Board's request and hope Board will act promptly in the matter since we do not want to delay the closing of this Yard indefinitely. Our General Manager, R. H. McGraw, in Cleveland and General Manager E. C. Johnson in Detroit will represent carrier and I suggest conferences in Toledo."

16. Thereafter, mediation efforts were carried on by the Board with plaintiff and defendants without success and, on August 1, 1955, the Board wired plaintiff as follows:

"Re File C-2386 proposed closing of North Yard, Toledo, New York Central Lines. Board has consid-

ered position of organizations that carrier has not complied with provisions of Section 6, Railway Labor Act by failing to serve formal notice of intention to close North Toledo Yard, also present status as reported by Mediator. It seems clear that there is no agreement in effect between the carrier and any organization requiring maintenance of yards or other operating facilities and no request for such an agreement. In the absence of a formal notice for a rule covering such operations, Board does not have jurisdiction. Arbitrary changes, if any, in Memorandum Agreements of August 3, 1932 and May 1, 1948 covering allocation of services would constitute violation of those agreements and would be referable to National Railroad Adjustment Board. This Board is therefore unable to docket application of organizations and is closing its file C-2386. By order of the National Mediation Board. Joint Horning, Brown, Gilbert, Kennedy, MacSwan."

17. On August 2, 1955, plaintiff notified its employees that the North Toledo Yard would be closed on August 7, 1955.

18. On August 4, 1955, defendants wired the Mediation Board as follows:

"This is to advise that BLF&E and BRT are setting strike date for 6:00 AM Eastern Standard Time Sunday August 7, 1955 New York Central West account management arbitrarily closing North Toledo Yard. BLF&E also setting strike date for same time on Michigan Central. Please accept this wire as usual 72 hour notice in cases of this kind."

In reply to the above telegram, the Board wired plaintiff and defendants as follows:

"We are advised by the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen that those organizations have set strike date for six am Eastern Standard Time Sunday August 7, 1955 on New York Lines West account management arbitrarily closing North Toledo Yard. Broth-

erhood of Locomotive Firemen and Enginemen also set strike date for same time on Michigan Central. Board hereby proffers its mediation services under provisions of Section Five First paragraph (B) under its Docket Case A-4923 and requests organizations to defer strike date pending mediation. Attention of all concerned is directed to status quo provisions of Section Six of Railway Labor Act. Please acknowledge."

On the same day, plaintiff wired the Board as follows:

"Receipt acknowledged your wire date Case A-4923. We will cooperate with mediation efforts of Board this Case."

19. Following extended efforts on the part of the Board with representatives of plaintiff and defendants, the Board sent to plaintiff and defendants the following letter on December 16, 1955:

"Reference is made to our Case No. A-4923 which covers a dispute between the New York Central Railroad, Lines West and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen on the subject of proposed closing of the North Toledo Yard of this carrier. 'Mediation services of the Board were proferred in our telegram of August 4, 1955 based on a strike date set by the organizations for 6 a.m., EST, Sunday, August 7, 1955. This case has been the subject of mediation proceedings by Board Member Francis A. O'Neill, Jr., but it has not been found possible to resolve the dispute in mediation.

"You are therefore notified that the National Mediation Board is closing its file in Case No. A-4932 as of this date.

"By direction of the National Mediation Board."

20. On January 17, 1956, plaintiff notified its employees in writing that the North Toledo Yards would be closed at 11:00 P.M., January 21, 1956, and on January 19, 1956,

plaintiff received a telegram from the Board, reading as follows:

> "Following wire received date from Messrs. Kennedy and Gilbert Quote Employees of New York Central Lines West as represented by Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Firemen and Enginemen authorised to withdraw from service in a legal strike effective 11:00 PM EST Saturday January 21, 1956 account of New York Centrals Notice closing North Toledo Yard at that time Unquote".

21. The agreements between plaintiff and said defendant Brotherhoods representing employees of plaintiff, contain no requirement that plaintiff maintain the North Toledo Yards either in perpetuity or for any length of time.

22. Said strike ordered and called by the defendant Brotherhoods was so threatened and called to require the plaintiff to continue the operation of its North Toledo Yard.

23. Such dispute between plaintiff and defendants does not involve terms or conditions of employment.

24. Plaintiff was ready and willing at all times hereinbefore specified and is still willing to discuss, negotiate, mediate or arbitrate with defendants the problems which may grow out of the reallocation of work of the thirty-five employees involved in the North Toledo Yard operation. Plaintiff has at all times fully cooperated with, and followed all suggestions of the Mediation Board and the requirements of the Railway Labor Act. Defendants have filed no specific grievances or complaints with the National Railway Adjustment Board, as suggested by said Mediation Board in its telegram of August 1, 1955.

25. The strike threatened and ordered by said defendant Brotherhoods as hereinbefore recited, would if it trans-

pired, cause the following listed effects and consequences to-wit:

The laying off of approximately 2,516 employees in the Toledo terminal area, resulting in wage loss to employees in excess of $34,800.00 for each day of such strike.

Embargo of shipments into and out of the Toledo terminal area, depriving 207 industries in Toledo and vicinity of service by rail, by plaintiff railroad company.

The prevention of interchange by plaintiff with The Baltimore and Ohio Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railroad Company, the New York, Chicago, and St. Louis Railroad Company, and the Toledo Terminal Railroad Company, serving 228 industries in Toledo and vicinity.

The prevention of transportation of mail by rail into and out of Toledo through plaintiff's Central Union Terminal, approximating 15,582 sacks per day.

The paralysis of all operations of plaintiff between Toledo and all points on its Western District, being the principal lines of the plaintiff from Buffalo to Chicago, and from Toledo to Charleston, W. Virginia, necessitating the laying off of approximately 16,361 employees in addition to those mentioned in the Toledo Terminal area, resulting in a total daily wage loss to said employees during each day of such strike in the approximate amount of $231,565.00.

The disruption of passenger operations and schedules of the Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company and The Baltimore and Ohio Railroad Company, which use Cleveland's Union Terminal, and the laying off of approximately 1,177 employees of the Cleveland Union Terminal, with a daily wage loss of approximately $15,305.00.

The disruption of passenger train operation of The

Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railroad Company, and The Wabash Railroad Company, which use plaintiff's Central Union Terminal at Toledo. Also disruption of the passenger train operations of the Grand Trunk Railway System which uses plaintiff's South Bend, Indiana, passenger station, and also those of the Pennsylvania Railroad Company which uses plaintiff's Erie, Pennsylvania, passenger station, and also those of the New York, Chicago and St. Louis Railroad Company, which uses plaintiff's LaSalle Street Station and trackage at Chicago, Illinois.

The impediment of passenger and freight operations of other railroads which have and use trackage rights over certain sections of said Western District, and also the operations of connecting carriers.

The stoppage of service to approximately 2,180 industries located on said Western District of plaintiff's railroad, many of which are engaged in the manufacture of goods essential to our economy.

The stoppage of service to approximately 110 industries which do not have side track connections, but which utilize plaintiff's team track facilities at various locations in said Western District.

The prevention of the interchange of cars by plaintiff between its Eastern District and its Western and Northern Districts, and disruption of train service in plaintiff's Eastern District, and the laying off of numerous employees, and a substantial resulting loss of wages.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter and the parties to this action.

2. Plaintiff, the defendants, the Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Fire-

men and Enginemen, their officers and plaintiff's employees represented by said Brotherhoods, are subject to the Railway Labor Act.

3. No labor dispute within the purview of the Railway Labor Act or the Norris-LaGuardia Act exists between plaintiff and defendants with respect to the right of plaintiff to close its North Toledo Yard.

4. Plaintiff has a right to close its North Toledo Yard and the defendants have no right in any way to interfere with such closing.

5. The strike threatened and ordered by defendants to prevent such closing of North Toledo Yard, would cause irreparable damage to the plaintiff and to the public.

6. No effective relief by law or by an administrative agency of the United States Government is available to plaintiff to prevent such strike and such damage.

7. A permanent injunction against the defendants, and each of them, and any one acting by, through or for them, or on their behalf, restraining them, and each of them from threatening, calling or conducting any strike, work stoppage or any other act of economic coercion to prevent plaintiff from closing its North Toledo Yard, should be ordered and issued by this Court.

Frank L. Kloeb,

Judge